2023 SOL Senate written testimony.pdf
Uploaded by: Abbie Schaub
Position: FAV

Testimony in Support of SB0686
Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act 0f 2023)

**** Support****

To: Hon. Chairman Will Smith, Jr. and members of the Senate Judicial Proceedings Committee

From: Abbie Fitzgerald Schaub, with Baltimore's Archbishop Keough High School "The Keepers" Netflix documentary storytellers

Date: February 23, 2023

In 2013 I began doing historical research into the unsolved 1969 Baltimore murder of my high school English teacher, Sister Catherine Cesnik. With the help of others, this evolved into the tragic story of sexual abuse of minor aged students at Archbishop Keough High School. Our Emmy nominated Netflix documentary "The Keepers" demonstrates the failures of both church and state to hold the guilty accountable. Our abuse survivors are the keepers of the trauma.

I had no understanding of the lifelong damage done by this intimate betrayal of trust. I thought it was something painful that you got over. I was very wrong about that. This betrayal of trust and intimate physical invasion creates permanent collateral damage which affects people their entire lives, and rolls over into harming relationships for generations within a family. Sexual abuse of a minor causes not just physical and mental difficulties but also takes a financial toll on those harmed. Under current Maryland SOL law, the people harmed have to bear those costs rather than the predator.

The problem is not just with religious organizations, though that is what I am most familiar with from our story. Abuse of minors within religious settings is the minority setting statistically; far more children are harmed by family members and acquaintances, usually people in positions of power and trust in their lives. SB686 is not targeted at churches - rather it is a

global child safety bill, aimed to protect Maryland children from hidden predators in all settings.

I most often hear objections to removing SOL age caps based on the idea that those who were harmed should come forward promptly to report the crime. This makes sense to those of us not harmed. Those who were harmed do not want to speak of it; they are embarrassed, ashamed, blame themselves and think others will blame them if they speak. Many were threatened to keep silent, as our Keough survivors were, and will never speak of it. They fear retribution by the one who harmed them, and do not want their parents or families to know. Some abuse survivors are more able to speak as older adults, with an average age of disclosure of 52 years old; some wait until their parents have died. At that point, the state will not file criminal charges without evidence and those harmed are time-barred from civil courts. The hidden predators remain in communities - passing screening to work with other children. Maryland's SOL time restrictions protect sexual abusers, allowing them to do more harm.

The Maryland Constitution's Declaration of Rights, Article 19, promises that "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land". I believe statute of limitation laws deny those sexually abused as minors from having that promised remedy for the injury. They are promised remedy "fully without any denial" - yet now in Maryland, purely because of their age, they are denied access to the civil court system.

I respectfully urge the Committee to issue a favorable report on SB0686 without any other amendments. Let lessons learned from our painful Keepers legacy allow other Maryland children to be better protected from sexual predators.

-Abbie Fitzgerald Schaub, resident of Maryland District 13.
Email abschaub@msn.com
Home address: 7672 Kindler Road, Laurel, MD 20723

SB686 - TFT Testimony in Support.pdf
Uploaded by: Caitlin McDonough
Position: FAV

The Family Tree

Headquarters
2108 North Charles Street
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P: 410.889.2300
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familytreemd.org

Raising families up.

24-hour Parenting Helpline:
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February 23, 2023

Hon. Chairman William C. Smith, Jr.
Hon. Vice Chair Jeff Waldstreicher
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

RE SUPPORT- SB0686 (HB 0001) Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations (The Child Victims Act of 2023)

Dear Mr. Chair, Mr. Vice Chair and Members of the Committee:

Thank you for taking up this important issue again which would eliminate the current age provision on the civil statute of limitations from of an alleged incident(s) of sexual abuse that occurred while the victim was a minor. Statute of limitation reform is one effective strategy to stop child predators that are grooming children in Maryland and will shift the cost of abuse from the victim to those who cause it.

The Family Tree, a proud affiliate of LifeBridge Health Group, is Maryland's leading non-profit organization dedicated to improving our community by preventing child abuse and neglect. In the forty-five years since The Family Tree first laid roots, the organization's leadership has cultivated a deep understanding of child abuse in Maryland. With national affiliations such as Prevent Child Abuse America, and The National Exchange Clubs, Circle of Parents and the Enough Abuse Campaign, The Family Tree belongs to a growing network of NGOs across the country devoted to protecting the most vulnerable members of society, its children.

Sexual abuse is a pervasive social problem and a major public health issue in America today according to the U.S. Justice Department and the Centers for Disease Control. Their studies state that 1 in 4 girls, and 1 in 6 boys, may experience sexual abuse by their 18th birthday. An estimated 90% of child sexual abuse goes unreported. Abuse occurs in homes, communities, and institutional settings. Home abuse is committed by relatives and other household members. Institutional abuse happens at the hands of trusted care-givers: teachers, doctors, clergy and coaches. While more children are abused in homes, the institutional abuser has more victims because he has better access and more opportunities.

Sexually abused children suffer from the effects of abuse for the rest of their lives. Substance abuse is common among victims because abusers use alcohol as a means to their end. Others self-medicate with alcohol and drugs. Victims frequently do not complete education, have sporadic employment, cannot manage personal relationships, and have criminal justice issues. Besides damage to their lives, the abuse has enormous societal and economic costs.

And most importantly, child victims are powerless to stop the abuse. Furthermore, child sexual abuse victims experience enormous shame and numerous other impacts of trauma that delays disclosure of abuse. Most people who experience sexual abuse in childhood do not disclose this abuse until adulthood.(McElvaney, R., Disclosure of Child Sexual Abuse: Delays, Non-disclosure and Partial Disclosure. What the Research Tells Us and Implications for Practice. Child Abuse Rev.. doi: 10.1002/car.2280 (2013).

The Child Victims Act of 2023 would:

- Eliminate the statute of limitations for child sexual abuse.
- Repeal the so-called "statute of repose".
- Create a permanent window for older claims.
- Allow both public and private entities to be sued.
- Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.
- The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence.

Maryland has no criminal statute of limitations for felonies, including those involving child sexual abuse. However, criminal, and civil proceedings provide different remedies, and both are necessary for justice to be served. Certainly, we can all agree that survivors should have every option available to heal.
Not only does this bill provide support and access for adult survivors, it provides preventative protection to children. In states where windows are opened, hidden predators are exposed.

Collectively, we are saying enough is enough. Those who sexually abuse children, and the institutions that protect abusers, must be held accountable. Survivors deserve access to justice. Maryland can and must do better. We respectfully urge you to support the passage of The Child Victims Act of 2023 in the Maryland General Assembly this year.

Thank you,

Patricia K. Cronin, LCSW-C
Executive Director

Testimony 2 2023.pdf
Uploaded by: carolyn surrick
Position: FAV

In 1993, a very brave Sarah Conway stood up in a packed auditorium at Key School asked why the school was celebrating the life of a man who had abused her when she was fourteen. Needless to say, the school did not reach out to her to see how they could help. Instead, people in the community were enraged that she had ruined a memorial service for the art teacher, Eric Dennard.

When I heard about it, I went to a Board member. I told him about what had happened to her. I told him about what had happened to me, and he promised to have the people fired who were still at the school, and who had allowed these terrible things happen in the 1970's. Weeks later, he let me know that nothing could be done.

In 1996 I went to the head of the school, I told him that when I was there in the 1970's, there were twelve teachers having sex with students who ranged in age from 13-18, boys and girls. I was very clear, and very specific. I also let him know that teachers were still there who knew, and some them had participated.

He was required to contact social services, they had to contact the police. I made statements, met with the police, had a private meeting with a board member who looked me in the eye and said, "I was on the board then. I know what you looked like. You wanted it." Just for the record I was thirteen when this happened to me and I do know what thirteen year old girls look like.

In 1997, I met with six members of the board asking for the school to pay for therapy retroactively, in the present and in the future, for all survivors. They declined.

In 2003, I went to the new head because I had reason to be concerned about a coach. Her reply, "I will not investigate him. He is one of our most popular teachers, and besides, you know how teenage girls exaggerate."

In 2013 I met with another Key Board member. She said nothing could be done and the predator who was still there, who had groped girls in 1971 and later raped girls, retired with a full pension in 2015.

In 2018 at the height of #MeToo, I went to my lawyer and said, "Now's the time, let's go after the school." He said, "I would love to, but there is absolutely nothing we can do. There are no laws in Maryland that will help you."

I am sixty-three. It is now thirty years since I started advocating, fifty-one years since I was thirteen. 1972.

SB0686 Child Victims Act of 2023 FAV.pdf
Uploaded by: Cecilia Plante
Position: FAV

TESTIMONY FOR SB0686
Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Bill Sponsor: Senator Smith
Committee: Judicial Proceedings
Organization Submitting: Maryland Legislative Coalition
Person Submitting: Cecilia Plante, co-chair
Position: FAVORABLE

I am submitting this testimony in strong support of SB0686 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

This is an important bill. It expands the definition of child sexual abuse as an adult allowing or encouraging a child to engage in a variety of sexual activities from obscene pornography to rape, incest, prostitution and other acts. It also allows the victim to file suit against the perpetrator at any time post-abuse and creates a two year lookback window to allow victims that were previously barred from filing a claim to do so for a limited period of time.

For those who have suffered sexual abuse as a child, this would be an amazing victory. We should never restrict them from getting justice because there is no greater crime than to prey on a child. We applaud Senator Smith for bringing this bill forward.

We strongly support this bill and recommend a **FAVORABLE** report in committee.

Maryland testimony template SB 686.pdf
Uploaded by: Christopher Gavagan
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Christopher Gavagan

DATE: February 23, 2023

My name is Chris Gavagan I am an advisor with the US Olympic Committee's Safe Sport program and had the honor of delivering the keynote address at their inaugural SafeSport Leadership Conference. I have produced and directed a documentary project called *Coached into Silence* which deals specifically with sexual abuse in youth sports. The silence referred to in the title is threefold: the silence of shame victims can experience, the silence of institutions protecting themselves first, and finally the legal silencing of the victims in their search for justice.

I came by my expertise in youth sports safety the wrong way, by falling victim to a coach who also happened to be a child sex predator. Over the years, I have been forced to watch, legally mute, while my own former abuser found his next victim, and his next victim. By leaving perpetrators unnamed and unexposed, and institutions unaccountable it guarantees that more children will fall victim. This is not a "maybe" it is a certainty. More silence, more victims. Pedophiles don't quit, they must be stopped.

The most direct way that I can illustrate this point, is to provide this link to the video of an interview that I conducted with my own former coach and abuser. This 4 minute video shows him admitting sexual abuse, defending it as a "lesson", and then laughing with relief at the statute of limitations: https://vimeo.com/coachedintosilence/coachsolcva

I strongly support SB 686 as tool to give survivors back their voice and bring accountability in the effort to prevent any child from becoming The Next Victim.

Remington Intro PPT for January 19 JPR Briefing Th

Uploaded by: Claudia Remington

Position: FAV

MARYLAND essentials for childhood

CHILD SEXUAL ABUSE

&

THE CHILD VICTIMS ACT OF 2023

SENATE JUDICIAL PROCEEDINGS COMMITTEE BRIEFING

JANUARY 19, 2023

Claudia Remington, JD, Co-Chair

MARYLAND essentials for childhood

- Statewide collective impact initiative – grew out of SCCAN's Prevention Workgroup
- public and private agencies and individuals from across sectors and the state
- receives technical assistance from the U.S. Centers for Disease Control
- Overall vision:
  - Promote safe, stable, nurturing *relationships and environments* for all of Maryland's children that help children grow up to be healthy and productive citizens so that they, in turn, can build stronger and safer families and communities for their children (a multi-generation approach).
  - Prevent & mitigate child maltreatment and other adverse childhood experiences .
- Focuses on the latest developments in developmental science (NEAR science): neurobiology , epigenetics, ACEs, and resilience to advance this vision.

JUSTICE 4 MD SURVIVORS

PROTECT KIDS, NOT PREDATORS

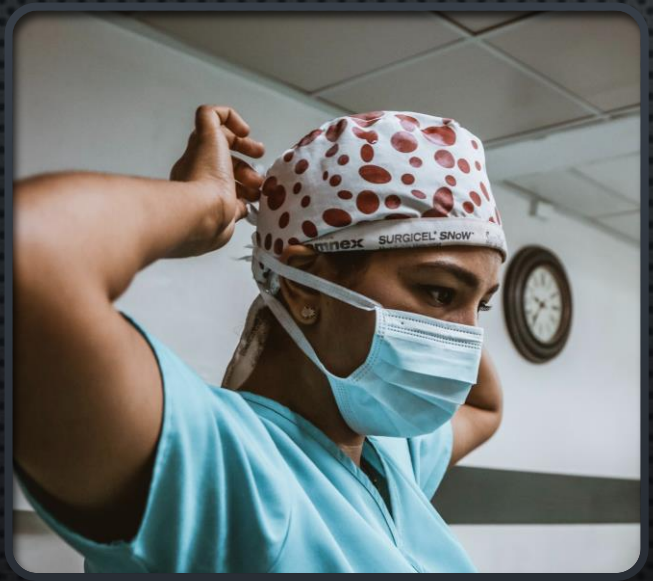
THE CHILD PROTECTION ACT OF 2023

TODAY'S AGENDA

- Child Sexual Abuse Numbers & Impact of Trauma
- Public Policy: How we protect kids & give survivors justice
- Legislative history & Constitutional discussions

CSA IMPACTS FOR VICTIMS:

- Brain Science teaches us about the impacts of trauma on children.
- Victims have increased risks for physical & mental health issues.
- Victims have increased risks for interpersonal struggles & risk taking behaviors
- Generational trauma impacts victim's children & grandchildren.



CSA IMPACTS ON SOCIETY:

- Law Enforcement
- Educational System
- Healthcare
- Substance Abuse
- Mental Health
- Social Services
- Workforce

INSTITUTIONAL BETRAYAL: DARVO

Deny

Attack

Reverse Victim and Offender

SURVIVORS VOICES ARE CLEAR:

- Keep kids safe
- Hold abusers accountable
- Access to justice

Buddy Robson (SB0686) 02-23-23.pdf
Uploaded by: Daniel Robson
Position: FAV

TESTIMONY IN SUPPORT OF SB 0686:
CIVIL ACTIONS – CHILD SEXUAL ABUSE – DEFINITION AND STATUTE OF LIMITATIONS
****SUPPORT****

TO: HON. William Smith Jr, Chair, and Members of the Senate Judicial Proceedings Committee.

FROM: Daniel F. "Buddy" Robson Jr.

February 23, 2023

Dear Senator Smith and Members of the Committee:

As you look at the attached picture I'm sure it seems innocuous enough. It's a picture of my son and me who is attending his first day of school as a 6th grade student on August 29th 2019. His birth date is January 15, 2008 and he is 11 years old in this picture. Thousands of fathers Nationwide most likely pose for same picture with their son(s) every school year but unlike the others, there's a backstory to this picture.

My son, Sean, was the EXACT SAME AGE I was when I was sexually abused by a Catholic priest by the name of Timothy P. Slevin, who at the time was assigned to St. James Church/School in Mt. Rainier, MD (Prince Georges County). The pain of my abuse laid dormant in my memory for many years but has come back full force with the revelations of Theodore McCarrick and the subsequent resignation of Donald Wuerl for his part in covering up the abuse of children as revealed in the Pennsylvania Grand Jury Report. It is still too painful for me to talk about and I really thought I'd take my "secret" to my grave. I will turn 68 in December this year and STILL live with my "secret". It's been a very hard road to have to live through the pain of my abuse again.

As a father and a parent, I look at my son and I sometimes cry, but I mostly pray that he'll never know the pain of what I went through and what I am going through now. Nothing, and no one will ever be able to take back what was done to me but if I can do anything at all to prevent my son, or anyone's son/daughter from having to experience the pain of sexual abuse at the hands of a pedophile predator then my efforts today and everyday will be worth it.

For these reasons I urge a favorable committee report and passage of Senate Bill 686 without amendments.

Most sincerely,
Daniel F. "Buddy" Robson Jr.


Today is Tues.
Homeroom
Science
Math
Social Studies
Literature
English
Homeroom
6th
GRADE

T. Slevin Article (04-1986).pdf
Uploaded by: Daniel Robson
Position: FAV

Ex-Priest Pleads Guilty to Sodomy

Court Records Show He Admits Abusing 7 Boys

By John Ward Anderson

Washington Post
April 13, 1986

A former priest who later worked as a basketball coach at Sacred Heart Catholic School in Northwest Washington has pleaded guilty to four counts of sodomizing a minor and has told police he sexually abused six other boys more than 50 times in the past six years, according to court documents, police sources and other law enforcement officials.

Many of the boys, who ranged in age from 10 to 16 when the incidents occurred, were associated with the Sacred Heart parish basketball team and met the man, Timothy Slevin, through athletic activities in the elementary school's gymnasium, court documents state. Some of the boys were abused as many as 20 times, according to the court documents.

Slevin, 47, was ordained a priest in 1965, took an extended leave of absence from the church in 1974 and was formally separated from the priesthood later that year. He subsequently worked as a personnel management specialist with the D.C. Office of Personnel and was a volunteer basketball coach at Sacred Heart when he was arrested last August.

On Dec. 2, before D.C. Superior Court Judge Bruce Mencher, he pleaded guilty to four counts of sodomizing a minor. On Feb. 19 he received a preliminary sentence of three to nine years in prison on one of the counts, pending a psychiatric evaluation.

He is to appear April 29 for final sentencing on the other three counts, each of which carries a prison term of up to 20 years and a $1,000 fine. All the charges involve a single youth. Slevin is being held at the federal prison in Butner, N.C.

In exchange for his preindictment guilty plea, Slevin received immunity from prosecution for allegedly abusing the six other boys on many occasions since 1980. Slevin identified the boys in an Oct. 22 interview with D.C. police, according to a police report filed in court.

According to a sentencing memorandum filed with the court by the U.S. attorney's office, "Mr. Slevin has engaged in repeated, constant and calculated pedophilia [sexual child abuse] for 20 years." The memorandum, quoting from a presentencing report filed with the court, states that, while still a priest, "Slevin went through 'treatment' once before in 1972 following the discovery that he had been 'fondling children' connected with the Nativity Catholic Church" at 6000 Georgia Ave. NW.

Brady Johnson, Slevin's lawyer, said that about 15 years ago his client "was in therapy for other problems . . . but he had never received treatment" for pedophilia until recently. He said there was no evidence that Slevin's problem dates back 20 years.

He said that Slevin's pedophilia is compounded by alcoholism and that Slevin is receiving counseling and undergoing drug therapy for both.

The U.S. attorney's sentencing memo states that the boy Slevin pleaded guilty to abusing was a student at Sacred Heart, that the boy's family is "unable to comprehend how the church could not have known about Slevin's long history of pedophilia," and that if the church did know, how could it "still interpose him with young boys in a church-sanctioned activity?"

Asked if the church had been aware of the 1972 allegations, and, if so, what actions had been taken, Barrett McGurn, communications director for the Archdiocese of Washington, said, "In any case of that sort, you can be sure the archdiocese reacted in a responsible manner, but I would not have anything more for you on that."

Msgr. Joaquin Bazan, who was pastor of Sacred Heart Church, 16th Street and Park Road NW, from 1976 to 1984, said that Slevin's involvement with children "comes as a complete surprise . . . . I had no idea there was a problem.

"What I find so difficult to understand is why nobody has said anything" about the incidents and Slevin's guilty plea, he said.

Sister Dorothy Victor, principal of Sacred Heart School, said that she had been unaware that more than one child had been sexually abused by Slevin. She said the school had not notified parents of the incidents.

Court documents state that the boy Slevin pleaded guilty to abusing first met Slevin in the fall of 1983, that the incidents took place at Slevin's apartment, and that at times he paid the boy money. The boy's grades suffered and he became increasingly morose, the sentencing memo states, adding that the boy has enrolled in another school and is receiving therapy.

Senate testimony SB686.pdf
Uploaded by: David Lorenz
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: David Lorenz

DATE: February 23, 2023

My name is David Lorenz and I am a survivor of child sexual abuse. I have been coming before this body for the last 18 years in the hopes of updating this state's archaic child abuse SOL so that survivors can get the justice they deserve and Maryland children would be safe. No argument that I have provided has been convincing. The Catholic Church, the only significant opposition to this bill, their arguments have prevailed. Will they continue to prevail, we have to wait and see if you all will be convinced by the testimony of the survivors, supporters and experts you hear from today or the arguments put forth by the current bishop Of Washington, Cardinal Gregory, that the Church has reformed. Remember this is the same Wilton Gregory who famously professed in 2004 that the scandal is history– despite the fact that Cardinal Theodore McCarrick, now shamed and defrocked because of his abuse of children and young seminarians, was the sole developer of the child abuse policy for the diocese of Washington – which covers 5 counties in Maryland.

I could talk about my abuse but I've done that so many times in past testimony that I won't repeat myself but it is in the record from previous years. In my role as Maryland director for SNAP (Survivor's Network of those Abused by Priests), I often field calls from survivors who are tentatively reaching out for the first time. They finally overcome the shame and the guilt that was thrust upon them as children. I can usually recognize them as a survivor by just their initial telephone greeting. Sometimes all they want is validation from someone – someone who understands their plight and their agony. Having received his permission, I want to tell you about one of those people. His name is Keith. He is 62 years old, receiving state assistance after living a life that was not extremely stable and lead him to prison for a while. He grew up in a poor section of Baltimore where he hung out with many friends around the neighborhood. Despite having suffered a stroke a few years ago, he can still tell you the names, and nicknames of most of his childhood friends. It sounded like he had a wonderful youth despite being somewhat impoverished. He was not Catholic but started to hang out with the charismatic priest, Brother Mike, at St. Ann's Catholic Church around the block. Brother Mike was friends with all of the kids in the neighborhood and took them on trips. On one weekend trip to a camp, Brother Mike repeatedly raped Keith. Keith was never the same after that. He was always afraid people would find out and think that he was 'less of a man'. In his later teen years, he bought a gun to prove that he was a MAN. Ultimately that did not end well and Keith spent time in prison. In his

statement to the diocese and the Attorney General's investigation team, Keith told them that he knew that other boys had been abused by Brother Mike, and that it was well known in the neighborhood that the pastor, Father Sam, had at least one boy toy that never left his side.

Why do I tell Keith's story? There have been numerous independent investigations of more than a few dioceses around the country – The 2018 Pennsylvania Grand Jury report Catholic child sexual abuse is one of the more well-known reports. These independent reports reveal a disturbing pattern that the Church regularly uses poor intercity and poor rural areas as dumping grounds for wayward priests. They know that these communities are too oppressed to speak up if they think something is amiss with their priests. They are extremely grateful to even have a priest and too afraid that the bishop may leave them without one if they report suspicion or even knowledge of an abusive priest. And so, the abuse continues and those parishes are left with an overwhelming number of abuse victims. The Maryland AG's motion to disclose indicates the same behavior may have taken place in Baltimore where it states that "Although no parish was safe, some congregations and schools were assigned multiple abusive priests, and a few had more than one sexually abusive priest at the same time. One congregation was assigned eleven sexually abusive priests over 40 years. The sexual abuse was so pervasive that victims were sometimes reporting sexual abuse to priests who were perpetrators themselves." While we don't yet know which parishes these were, do you honestly think it was done at affluent parishes? For all of the Keith's that were raised in the economically depressed areas of Baltimore and other cities, for those in the poorer rural areas who were abused because the diocese dumped predators there because they knew no one would push back, I urge you to vote favorably on HB1

Template for Senate testimony for the Child Victim

Uploaded by: David Schappelle

Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: David S. Schappelle

DATE: February 23, 2023

My name is David Schappelle, and I strongly support SB 686 as it will give me and so many others an outlet for closure, healing, and assurance.

I currently live in Ellicott City (Howard County), with my wife and five children. My sons are age 16 and 14, and daughters are 12, 10, and 5. I am currently 45 years old. I have a Master of Science degree in Management of Human Resources, and I'm currently the Director of HR at a government contracting firm in Columbia, MD. My wife and I are raising our kids in the Catholic religion, at St. Louis parish in Clarksville, MD (Howard County), where they attend weekly mass, and the kids attend CCD classes towards confirmation.

The other part of my story is one that I just learned about a few years ago; I am a survivor of child sexual abuse, and I had repressed the memories of it until about 4 years ago, in the spring of 2019, and I was 42 years old. Mine and my family's world, was shattered after I began to recall the horrific memories that I had repressed as a kid, of being sexually abused and even raped at gun point by a Catholic priest in 1986 when I was 9.

Over these past four years, much of it during the pandemic and sheltered at home with my family, I relived my trauma through slow and painful memory recollection, and I am still trying to heal all the wounds. I wish that these memories are not real, but they are. I could not deal with this as a child, but even now, it is still unimaginably difficult. Everyone around me sees the intense effects on me, and some in my family even had collateral damage as a result. Visibly, I lost 30 pounds in about a month. Invisibly, my mental pain is still intense. I am managing my PTSD, anxiety, and depression through extensive therapy, counseling, and medications, which has all added up to over $50k and counting. I'm still piecing together my history.

What I recall so far is that my abuse happened in the fall of 1986, when I was 9, in Gaithersburg, MD (Montgomery County). My family had just moved there, and I was about to start 4th grade in a new school. We started attending mass and religious Ed at St. Rose of Lima Catholic parish. My abuse occurred in religious Ed during weekly "practice" reconciliations which were 1-on-1 with the priest, and in multiple other instances over a few months. One time there was even a second priest involved. Another time I was even raped during a church fall picnic for kids. When he was done raping me, and I awoke from passing out due to the pain, he made me say the Hail Mary prayer with him, told me to pull up my shorts and go back out and play with all the other kids at the picnic, which I did as I was told.

The priest who primarily sexually abused and raped me was Wayland Brown. He was from the Archdiocese of Savannah Georgia, which sent him in 1986 to St. Luke's Institute in Silver Spring, MD to receive treatment for his known pedophilia, yet he continued to have direct and unchecked access to children like me.

He died in prison in 2019, where he was serving sentences for sexually abusing and raping many more children in Georgia and South Carolina at Catholic schools (after he left Maryland and went back home he was assigned to head some schools for children!).

About a few months ago, I recalled the actual moment in 1986 when my mind repressed the memories. It was the very night after being raped earlier in the day, and I laid in bed, looking up at the ceiling, and my 9-year-old self was trying to deal with what happened. My rear was still sore, but I was too embarrassed, confused, and scared to tell anyone what happened. Before falling asleep, I remember now, I told myself to "forget everything that happened, so that I can try to live a normal life like all the other kids - that, I don't want to be any different than anyone else." And so when I went to bed that night and then I woke up the next morning, it was as if nothing ever happened and I never thought about it again and it erased from my consciousness. I never dealt with it…until now.

It is important to no longer sweep away the past, or keep it locked up in a container. Closure to me means having answers, acknowledgement from the accountable parties, and help to pay for my family's continued medical treatment and therapy. This bill will potentially give me and so many others an outlet for that closure. For these reasons, I respectfully urge a favorable report on SB 686.

BTemplate for Senate testimony for the Child Victi
Uploaded by: Donna VonDenBosch
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: [Enter Your Name Here}

DATE: February 23, 2023

[The body of your testimony should contain three main components and ideally be no more than a page long. Fact sheets are also good to include with written testimony.

- **Introduction** - Introduce who you are and/or the group or organization you represent (if any); State your position on the measure, e.g., "I strongly support SB 686 as it would…"
- **Content** - State your reasons or personal story.
- **Closing** - Reiterate your position on the measure and thank the committee, e.g., "For these reasons, I respectfully urge a favorable report on SB 686."]

JHU_Moore_Center_Senate testimony for the Child Vi
Uploaded by: Elizabeth Letourneau
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Elizabeth Letourneau, PhD, Director, Moore Center for the Prevention of Child Sexual Abuse, and Professor, Department of Mental Health, Johns Hopkins Bloomberg School of Public Health

Rebecca Fix, PhD, Faculty Affiliate, Moore Center for the Prevention of Child Sexual Abuse, and Assistant Professor, Department of Mental Health, Johns Hopkins Bloomberg School of Public Health

DATE: February 23, 2023

We are Elizabeth Letourneau and Rebecca Fix of the Moore Center for the Prevention of Child Sexual Abuse at the Johns Hopkins Bloomberg School of Public Health. Dr. Letourneau has 35 years of experience as a clinically trained researcher focused on child sexual abuse prevention, practice, and policy. She is an internationally recognized leader who has advised the National Academies of Science, the World Health Organization, and other state, national, international and Big Tech governance bodies. Dr. Fix is a child and forensic psychologist whose expertise on child sexual abuse is evidenced by more than 60 publications in scientific journals.

The views expressed here are our own and do not necessarily reflect the policies or positions of Johns Hopkins University.

We urge a favorable report on SB 686, Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023).

The provisions proposed in SB686 are critical because research by Dr. Letourneau and others shows that most survivors of child sexual abuse delay disclosing their abuse until years and even decades after it occurred; many never disclose at all. Even when disclosures do occur, they are typically to friends or family and not to authorities.

Approximately 1 in 4 girls and 1 in 13 boys in the United States will become victims of child sexual abuse. Abuse increases risk for health problems including but not limited to PTSD, heart disease, cervical cancer, and smoking, thereby increasing morbidity and mortality, and reducing quality of life.

Our research also found that abuse costs each victim more than $280,000 in lost earnings and other economic impacts.

SB 686 provides survivors with an avenue for seeking justice and redress; it also serves as a motivator for others to avoid engaging in or shielding abusive behaviors. History has shown that many institutions invest in preventing and addressing child sexual abuse **only after being held accountable** for shielding the actions of their members.

For these reasons, we respectfully urge a favorable report on SB 686. Thank you for your time and consideration.

Frank Schindler Senate Judicial Proceedings Commit
Uploaded by: Francis Schindler
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
THE CHILD VICTIMS ACT
Civil Actions – Child Sexual Abuse – Definitions, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Frank Schindler

DATE: February 23, 2023

My name is Frank Schindler, and I am a member of the Survivors Network of those Abused by Priests (SNAP). I strongly support SB 686 as it will send a strong message to all survivors and their abusers that the gross violation of the basic civil right of children not to be abused will no longer be tolerated in Maryland, no matter how powerful the source of that abuse.

In 1954 a 5-year-old boy climbed a dark staircase and entered a room to start kindergarten. A short time later, a nun, a trusted figure in a Catholic school, escorted this boy into a room where a Catholic priest was waiting. The boy had been told a priest is a representative of God on earth, whose actions were not to be questioned, and who could never do anything wrong, & the boy believed this. Shortly thereafter the boy was subjected by this priest to repeated and painful sexual abuse which occurred 2 to 3 times a week over a period of approximately 5 months. The basic right of a powerless 5-year-old child not to be abused was violated over and over for the gratification of a priest whose powerful position was unquestioned. I was that 5-year-old. I am now 73 years old. For close to 70 years and for whatever remains of my life, I will suffer the consequences of that abuse.

As a psychologist specializing in neurocognition and neuroscience I could describe for you the long-term dysregulation of neurochemical systems and of brain regions including the amygdala, hippocampus, and medial prefrontal cortex. I could describe the distortion of emotions, interpersonal relationships, and self-perception produced by such dysregulation. And how the dysregulation contributes to the reality that most survivors only fully recall their abuse years after it occurs. Neurobiologically, the experience of trauma bears no “time stamp”, unlike other memories. But this information is well-established, well-known, and easily accessible to any of you. It is sufficient to say that my life, and the lives of others subjected to sexual abuse and trauma are never the same – biologically, emotionally, or socially. The effects are pervasive and life-long.

Like so many others I’ve struggled with depression, shame, self-loathing, and persistent, often very powerful, thoughts of suicide. I have been lucky enough to have received support from my wife, from family, and from other survivors and advocates. Otherwise, I am quite sure I would not be here.

For too long, the Roman Catholic Church has fostered the systematic, institutionalized sexual abuse of children and has enabled priests, bishops, and others to avoid accountability for criminal actions. This has been well-documented by the reports of States Attorneys General and other sources. The Catholic Church has persisted in its policy of using completely arbitrary time limits to silence the attempts of survivors to obtain justice. Despite countless opportunities to acknowledge their history and finally take responsibility for their reprehensible behavior, this morally bankrupt institution has persisted in re-traumatizing survivors through their lies and cover-ups.

The Child Victims Act will enhance the basic right of children not to be abused for the pleasure and power of those entrusted with their care. It will finally enable survivors and their supporters to hold those who perpetrate and are complicit in those atrocities accountable for their actions. I consider this both a moral and a civil rights issue. Passage of this legislation will send a strong message to all survivors and to their abusers that this gross violation of the basic right of children not to be abused will no longer be tolerated in Maryland, no matter how powerful the source of that abuse.

For those reasons, I respectfully urge a favorable report on SB 686.

SB686TheChildVictimsActof2023_GloriaLarkin022023.p
Uploaded by: Gloria Larkin
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

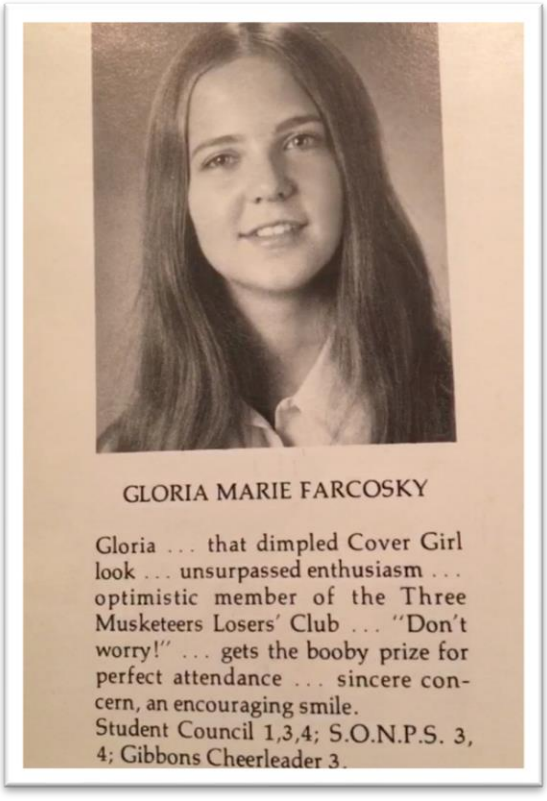
TO: Hon. William C. Smith, Jr. Chair, and members of the Senate Judicial Proceedings Committee
FROM: Gloria Larkin, Survivor
DATE: February 23, 2023

I am Gloria Larkin, resident of Howard County, Maryland for over 45 years. I am imploring you to eliminate the statue of limitation on reporting the heinous crime of child sexual abuse. When a child is abused whether once or repeatedly, it is impossible for her to know that the abuse is illegal and that she should report it. She is a child, dependent upon adults to protect and care for her. Often it is exactly those adults who are the abusers. In fact her entire childhood is destroyed because she has no one to confide in, to trust, to report to.

That child only knows she has been harmed, and often the only way to survive is to pretend she is OK, to create a survival mentality, even if the abuse continues for a long period of time. With no one to trust, no safe place, no understanding of law and her own rights, she is truly voiceless.

Medical science has proven that the human brain survives extraordinary trauma by shielding the person from the memory of abuse, at least initially. However, post-traumatic stress disorder is often the result.

For those that experience sexual abuse as a child, they become experts at survival, only focusing on the now and future, seeming to thrive, but when in reality, the past sexual abuse becomes a cancer that causes personal misery and dysfunction.


GLORIA MARIE FARCOSKY

Gloria ... that dimpled Cover Girl look ... unsurpassed enthusiasm ... optimistic member of the Three Musketeers Losers' Club ... "Don't worry!" ... gets the booby prize for perfect attendance ... sincere concern, an encouraging smile.
Student Council 1,3,4; S.O.N.P.S. 3, 4; Gibbons Cheerleader 3.

Some victims cannot exist with the pain, they kill themselves. Others struggle in every aspect of their life, turn to alcohol, to drugs, to risky behavior to mask the pain of childhood sexual abuse. Until the day when it is no longer possible to hide the abuse, when it is necessary to, as an adult, to acknowledge the root cause of the pain and name the abuse, name the abuser, living or dead.

And finally, realize, that it was not our fault, it was 100% the fault and responsibility of the abuser.

I know this because I am a survivor. The crime committed against me was the emotional, psychological and sexual abuse by my trusted counselors and protectors, Fr Maskell and Fr Magnus

and a police officer, while I was a student at the Catholic Archbishop Keough High School, in the Archdiocese of Baltimore, Maryland, from the Fall of 1970 into Spring 1972, when I graduated.

Now is the time for you to act responsibly to protect all children from today forward by repealing the unreasonable statute of limitations previously purchased by the lobbying efforts of the catholic church. And to add a “look back” window to allow all existing survivors to have their voice heard no matter how long ago the abuse occurred or what individual or organization was involved. And alter the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse to include any act that involves an adult allowing or encouraging a child to engage in certain activities; repealing a statute of repose for certain civil actions relating to child sexual abuse; and providing for the retroactive application of the Act under certain circumstances and other details provided in the legislation.

Gloria (Farcosky) Larkin
6044 Old Lawyers Hill Rd
Elkridge MD 21075
410-262-5010

2023 Feb 23 SB0686 Parents' Coalition of Montgomer

Uploaded by: Janis Sartucci

Position: FAV

SB0686

Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Judicial Proceedings Committee

Thursday, February 23, 2023

Janis Zink Sartucci on behalf of

Parents' Coalition of Montgomery County, MD

Thank you for the opportunity to speak today.

As recently as 2021, another child sex offender was shown to have been employed by MCPS for 25 years, known to be a sex offender, and left in MCPS classrooms. The victims of this child sex offender never had their day in court. The crimes were never reported or prosecuted. We only know about them now because the Buffalo, NY office of the FBI released the previously secret MCPS personnel records on this offender.

The Buffalo, NY FBI press release is attached. MCPS has never reached out to these victims or reported these crimes. Will these victims ever have their day in court?

We would like to remind the Committee that the Justice Reinvestment Act of 2016, included allowing sex offenders to have their records expunged and their names removed from the Maryland Sex Offender Registry. We now have a list of former MCPS teachers who were convicted of sexually abusing school children, sentenced and put on the Maryland Sex Offender Registry who have now had their convictions and Sex Offender Registry entries expunged. Why were sex offenders who were sentenced to lifetime registration included in this legislation?

The Netflix documentary The Keepers focused on Maryland's legislature and how the Maryland legislature protects sex offenders. Is this really the international reputation that we want for Maryland? A sex offender friendly state?

The presence of the Catholic Church's sex offender facility in Silver Spring brings more international attention to Maryland along with concerns about reporting and registration of the sex offenders that reside at the St. Luke's Institute.

Covering up crimes against children is costly to classrooms and to children's lives. Will this be the year that the Maryland legislature decides to put children first?

Janis Zink Sartucci

Parents' Coalition of Montgomery County, MD

parentscoalitionmc@outlook.com

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FOR IMMEDIATE RELEASE

Friday, July 30, 2021

Retired [MCPS] School Teacher Arrested And Charged With Enticement Of A Minor And Possession Of Child Pornography

CONTACT: Barbara Burns
PHONE: (716) 843-5817
FAX #: (716) 551-3051

BUFFALO, N.Y. - U.S. Attorney James P. Kennedy, Jr. announced today that Richard W. Scherer, 70, of Depew, NY, was arrested and charged by complaint with enticement of a minor and possession of child pornography. The charges carry a mandatory minimum penalty of 10 years in prison, a maximum of life, and a $250,000 fine.

Assistant U.S. Attorney Aaron J. Mango, who handled the case, stated that according to the criminal complaint, on June 28, 2021, the FBI received information regarding the defendant from a citizens group known as Predator Poacher, which maintains a website and YouTube channel. The group maintains several online accounts that purport to be minors of various ages, using the accounts to chat with adults who later meet for sexual contact. These contacts are recorded, the individuals interviewed, and the videos then posted to the group's platforms. A member of the group made contact with Scherer on the Instagram account richard_scherer. The defendant believed the member was a 13-year-old girl. The communications between the two were sexual in nature and culminated with a planned meeting at a retail store on Amherst Street in Buffalo. When Scherer arrived, the
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group confronted him outside the store and interviewed him for about 58 minutes, during which he allegedly admitted that he is a pedophile. The Buffalo Police were called following the interview.

Subsequently, investigators accessed Scherer's communications with the purported 13-year-old girl, which occurred between April and June 2021. During those communications, which became graphic and sexual in nature, the defendant mentioned he was a teacher, who taught sexual education in the past. On June 27, 2021, Scherer arranged to meet the purported 13-year-old girl the following day, and when he showed up for that meeting, the defendant was confronted by members of Predator Poacher. The final text from Scherer was "I'm here." According to the complaint, the defendant also communicated with a purported eight-year-old girl through Predator Poacher, during which the communications also became graphic and sexual in nature.

Scherer was a teacher for approximately 25 years in the Montgomery County (Maryland) Public Schools. A report obtained from the school system during the investigation stated, "On June 13, 2011, the parent of a 4th grade student, [redacted by MCPS], came to the school and made a report to an assistant principal about some concerns she had regarding possible inappropriate behavior by Mr. Scherer while interacting with students." The report stated that the student related that when the defendant has lunch with a particular student, "he pulls her to him and hugs her, that he has patted her rear end and hips, and that he pressures her to each lunch with him." The parent advised that her daughter and the daughter's friend are often pressured to each lunch with Scherer. In September 2011, the Superintendent of Montgomery County Public Schools sent a letter to the State of Maryland Superintendent of Schools. The letter stated, "this is to notify you that Mr. Richard W. Scherer, an English for Speakers of Other Languages (ESOL) teacher for Montgomery County Public Schools, resigned after notice of allegations of misconduct involving a student. I recommend that Mr. Scherer's certificate be revoked." The defendant's teaching certificate was subsequently revoked.

A search of the defendant's cell phone recovered two images of child pornography.

Members of the public who have information related to this case are asked to call the Federal Bureau of Investigation at 716-843-1680.

The criminal complaint is the result of an investigation by the Federal Bureau of Investigation, under the direction of Stephen Belongia, Special Agent-in-Charge.

The fact that a defendant has been charged with a crime is merely an accusation and the defendant is presumed innocent until and unless proven guilty.

Retired School Teacher Arrested And Charged With Enticement Of A Minor And Possession Of Child Pornography | USAO-WDNY | Department of Justice

SOL Testify at Hearing 2023.pdf
Uploaded by: Jean Wehner
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Jean Hargadon Wehner

DATE: February 23, 2023

My name is Jean Hargadon Wehner and I strongly support bill SB 686. I was sexually abused and raped at Archbishop Keough High school, between the years of 1967 & 1971, by Father Joseph Maskell and others. Accomplices to these crimes are the institutions that betrayed their trusting faith communities by allowing their children to be left in harm's way. The trauma I endured during those years was so great, that in order to survive, I had to sever from that young victim and bury her deep within my subconscious. This is called dissociative amnesia.

In the spring of 1992, at the age of 38, I felt as if a 14-year-old girl sat down next to me and said, "I have something to tell you." I then began "throwing up memories". These repressed memories, which have continued surfacing to this day, may be triggered by a photo, a smell or a place. These disgustingly detailed images and thoughts do not present themselves in a chronological fashion. As the memory unfolds, I feel on multiple levels that I am going through that horrible experience for the first time.

While my world was shattering, I met with church representatives and after a few meetings I gave 2 formal statements pertaining to the abuse. Following the first one, Joseph Maskell, who was in his fifties, was removed from his parish and sent for evaluation.

In 1994 I agreed to file a civil suit against Joseph Maskell, the Archdiocese of Baltimore and The School Sisters of Notre Dame with Teresa Lancaster. I said yes, not to bankrupt the Catholic church, but because the archdiocese returned Maskell to work as a pastor to a neighboring parish. I was upset that he was around kids, and the thought that he was in the area and knew that I had told the "secret" terrified me. I had visions of him shooting me and my family with the gun he threatened me with at Keough.

Also, the statute of limitations in 1971, which we were bound by, stated we had to report abuse within three years of it ending. **I couldn't believe I was expected to report something I did not remember, so I thought I was still in my three-year time frame, since I had no memory of any of this abuse until 1992.**

We lost the case in 1995 due to the court's decision that repressed memories were not scientifically proven, keeping the statute of limitations intact. This decision undermined my, and many others', health progress for years. As victims we need to know that perpetrators will be held accountable when found out. Because the science behind the effects trauma has on the brain has grown, allowing dissociative amnesia to be more understood and accepted, I think having a statute of limitations imposed on victims of childhood sexual abuse is not fair to the victims, while it benefits the perpetrators.

I strongly urge each of you to vote to pass bill # SB 686.

Thank you!

Victims.pdf
Uploaded by: Jena Cochrane
Position: FAV

Why Don't Victims Come Forward?

My name is Jenipher Kollar Cochrane and I am a 51 year old incest survivor from childhood rape and molestation. I was 12 when first attacked. I am writing in support of SB0686. By now, you already have a good idea of how you're going to vote on this bill; And I wish there was something I could say to move you towards the affirmative. But despite how you vote, I hope you give me the courtesy of reading my victim impact statement because there are two points I would like to make. First, did you wonder why it takes survivors and victims such a long time to come forward? It's because they don't want to become *me*. Unlike a lot of my fellow survivors testifying on this bill, I had my day in court, and I put my Stepfather, Steve Dwyer behind bars when I was in high school. But the price for speaking the truth was a lifetime sentence of family destruction. I lost EVERYTHING; Most importantly, I lost my mom's love and maternal bond; I lost ALL four of my maternal siblings; And I lost the love of my close-knit Italian family. *Why?* Because it's a lot easier to make me into a liar than it is to face the uncomfortable and disastrous truth of what happened. In addition, it's a lot easier to scapegoat me than deal with the wrath of adults who are cornered and can spin a different truth that everyone wants to

believe instead. Childhood sexual assault is like a hurricane that destroy everything in its wake. No one wants to believe that a nice man like my stepfather would do such a horrible thing. Nor do they want to believe that my mother (their own flesh and blood) was hugely active in the cover-up. My family would say, "They didn't want to pick sides." But that statement is picking sides! When it comes down to it, my mother, my siblings, my aunts, my uncles and my cousins don't want to be upset. My truth destroys the ability of everyone to have a nice Christmas, Easter or wedding. The truth makes them feel bad—so they don't deal with me which is their way of not dealing with the uncomfortable truth. Because if they believe me, then they must take responsibility for their part in the damage that was done. What I mean by this, is if they allow themselves to believe me, then they have to take responsibility for the cover up and for actively ignoring the truth and marginalizing what happened. And they can't do this because this challenges their world view of being good people.

At the end of the day, I learned that families work a lot like corporations and churches. They just want to keep the status quo. They don't care about fairness or what's right or wrong. They just care about the uncomfortable truth going away.

To complicate things, if people like my family can't see the damage, then it's so much easier to convince themselves that none of it happened. So, their response is to pressure the person that has been hurt the most to keep quiet using guilt and shame as their most lethal weapons heaping years of sadness on top of the abuse. At least this is the way it works in my family.

In my teens, my mother even drove me to a notary republic to retract my statement saying that she would kill herself If I didn't recant. But this stuff just never goes away. Two years ago, at my grandmother's

funeral, my mother told me that she hoped I die alone and that I will never see her again. She has turned the majority of the people in my family against me despite the fact that my stepfather went to prison for his crime. This is the pain that victims and survivors most often deal with when they come forward. And this is one of the many reasons they don't come forward until later in life.

But the real uncomfortable truth is that I do exist and so do all the other survivors testifying on this bill. I didn't lie, and neither did they. My stepfather did rape me in the dead of night in the back of my mother's gray Capri. Steve did shatter my innocence along with my hymen and the whole dirty matter broke my heart and threatened to take my soul.

The effects of childhood rape are disastrous over a lifetime. At 16, I tried to take my life and was admitted into Freehold Area Hospital. (Another dirty little secret that was hidden away.) Today, I know I didn't want to die. I just wanted all the pain to stop. But the biggest obstacle to keeping a victim in pain is the silence and shame. And the threat of being broken again is almost too much to bear. But that is one thing you can change with the passage of this law—at least for the other victims and survivors that still need to tell their story.

This brings me to my second point. Every victim and survivor deserve to have a forum to speak their truth. No matter if that truth does not come out for 50 or 90 years. If victims are ***brave*** enough to come forward, then I'm asking you to be ***brave*** enough to give them a forum to tell their truth. It's time to let victims speak. It's time to shift the burden to the families, corporations, organizations, and the churches that help cover up the harm every day. And most importantly, it's time for them to say their sorry.

TESTIMONY IN SUPPORT OF SB 686.pdf
Uploaded by: jennifer Gross
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
SUPPORT

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

FROM: Jennifer Gross (Licensed Certified Social Worker – Clinical, MD, Certified Sex Offender Treatment Provider, VA, Clinical Member, ATSA)

DATE: February 23, 2023

As parents, as advocates and as lawmakers, we surround our children with people we trust to protect them. When a child is sexually abused, 9 times out of 10 it is that very person we trusted and thus entrusted our child to who committed this horrific abuse upon them.

When a child is abused by someone we told them was safe, a child naturally blames themselves for what happened as they believe they must have done something to deserve it. When the abuser is a leader in the child's community, the damage is compounded as that place, that organization, that religion, that group often cannot be avoided. Perhaps the abuser can be, but what they represent, a church, a youth group, a sport cannot be. Over the years, interactions with those groups cause further pain.

By the time a child realizes what happened was not their fault, they did not deserve it and they gather the courage to tell us what caused them such pain for so many years, what was behind their drinking, failed relationships, suicide attempts and more, by that time most people are 52 years old.

Imagine then, reaching out, telling and seeking help, only to learn there are far worse things than being abused by that one person. What can be worse than knowing one person viewed you as an object to be used, abused and discarded? What can be worse than knowing one person viewed you not as a human, worthy of dignity and love but viewed you as a thing to be used for their own deviant pleasure. What can be worse than that? What survivors tell us what is worse is when they tell, when they seek understanding and kindness, the very people they turn to then commit a betrayal of greater order. The very organizations which were founded to help, serve and protect then turn with vengeance to protect, not the victim, but themselves. They lie, they hide, they dissemble; thus mimicking the perpetrator's use of power, control, blame shifting and more, thus they revictimize the victim.

Imagine, then being that survivor. Now you learn it was not just your abuser who does not see you as a human being, worthy of dignity and respect. Now you see it is an entire organization, a system, an institution. One person treating you like trash is damaging, an entire organization treating you like trash? This is institutional betrayal and it is abuse. It is devastating.

We stand before you today to ask you to open a door. That's all, just open a door to allow survivors to walk through and seek justice. We are not asking you to deliver that justice. This bill does not ask you to do anything other than open a door so adults can step through and access the legal system to seek healing and safety. If you open that door, all you are doing is giving survivors the ability to tell their story and let our justice system take over from there. That's all.

Abusers prey upon the innocence of children. When those abusers do so as employees or volunteers of an organization, far too often, when the abuse becomes known the institution choses to protect itself instead of the child. Children cannot protect themselves from either of these things from occurring. Children cannot. But adults can. Pass this bill so brave survivors can tell their story and seek justice. By doing so, this creates safety for the children still in the care of those abusers (many of whom are still alive) and from those institutions who sheltered and protected them.

You have heard from powerful groups that opening that door will have calamitous effects upon groups and communities. To that I say, nonsense. Plain and simple nonsense. Do not allow them to insult your intelligence.

I am a parent, a social worker, a certified sex offender treatment provider. I am the mother of 2 former boy scouts. I am a Catholic, a direct decedent of Archbishop William Gross. I am a former Director of Safe Environments for a nearby diocese. I am the former chair of a Catholic regional review board, a board that reviewed allegations of clergy abuse and reviewed safety plans and victim outreach. I currently volunteer to teach the Catholic church's mandatory prevention class. I am here to tell you in no uncertain terms, it is not extending the statute of limitations which will hurt the church. The church, the boy scouts and other organizations have inflicted this damage upon itself. It is not the original abuse committed by clergy or a leader which is causing the damage, it is the coverup, the duplicity, the ongoing efforts to protect the institution and not those who serve. When powerful organizations continue to engage in subterfuge and secrecy, when they make veiled threats of lost funding for programs, they are committing further abuse upon not only survivors but all of us. It is time for that to end. As a Catholic, deeply involved in this issue, I am urging you to remove the statue of repose and pass this bill as written. Shamefully, my church has only taken steps to reform and protect when pressured to do so by survivors, lawmakers and the media. So be it. They had their chance to do the right thing, they chose not to. They chose to ignore a problem, they chose to cover up an issue. They chose to move danger around. They have done this to themselves. I urge you to open pass the bill and let survivors walk through to seek justice for themselves and safety for our children. Let them now face those once powerless children, those children who are now adults, who can now speak for themselves, defend themselves, protect themselves. Let the church, the scouts and all others now go toe to toe with adults . They made their choices. Let them now face

the consequences. By doing so you will be sending a loud and clear message, you will not allow this Institutional betrayal and abuse to continue.

For these reasons, I urge a favorable committee report and passage of SB 686 without amendments.

SB686 Civil Actions Statute of Limitations Center

Uploaded by: Joyce Lombardi

Position: FAV

A LIFEBRIDGE HEALTH GROUP
CENTER FOR HOPE
Advancing hope, healing and resilience

SB686- Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)
Senate Judicial Proceedings Committee -- February 23, 2023
Testimony of Adam Rosenberg, Executive Director, LifeBridge Health Center for Hope
Position: **SUPPORT**

Center for Hope supports SB686. This bill extends Maryland's statute of limitations (SOL) to allow adult victims of child sexual abuse the ability to take civil action when they are ready to do so. It also caps damages, including for government agencies.

Center for Hope, a subsidiary of LifeBridge Health, is a comprehensive violence intervention program that provides trauma-informed crisis intervention and prevention services to over 6,000 patients and community members each year who have experienced child abuse, domestic violence, elder abuse, and community gun violence in the Baltimore region. Our services include Maryland's first nationally accredited child advocacy center that provides an evidence-based multidisciplinary team response to abuse and trafficking. Our team provides support for adult survivors of abuse and has trained thousands of professionals on how to prevent, identify and report child abuse.

Delayed reporting is the norm. Only 1/3 of child abuse victims report what happened to them while they are still minors. Some never report at all. A child may not have the emotional, mental and financial stability to confront their attackers – predators who almost always occupied a position of trust, power and care. The average disclosure age for reporting child abuse is 52 years old. CHILD USA (2022).

Burden shifting. Left untreated, childhood trauma can have lasting effects on a person's social development, and physical and mental health. Long term costs stemming from child sex abuse are estimated to be about $200,000 to $800,000 per victim.[1] An extended SOL can help shift the burden of paying costs to the perpetrators and the institutions that hid their crimes.

Statute of Repose issue can be decided by the courts. Legal experts disagree whether the language added to Maryland's 2017 statute of limitations law qualifies as a "statute of repose" that may be exempt from legislative action, or a "statute of limitations" subject to repeal.[2] This, arguably, is not a matter for the legislature to decide, but rather one for the Maryland Supreme Court (formerly called the Maryland Court of Appeals. SB686 allows a damages claim to be filed "NOTWITHSTANDING ANY TIME LIMITATION UNDER A STATUTE OF LIMITATIONS, A STATUTE OF REPOSE, THE MARYLAND TORT CLAIMS ACT, THE LOCAL GOVERNMENT TORT CLAIMS ACT, OR ANY OTHER LAW."

We respectfully urge a favorable report on SB686.

Adam Rosenberg, Esq., Executive Director, Center for Hope
arosenberg@lifebridgehealth.org (410) 469-4664

Joyce Lombardi, Esq., Government Relations
Joyce@JRLaw.group (410) 429-7050

[1] Md State Council on Child Abuse and Neglect (2021).
[2] Testimony of Kathleen Hoke, Esq. Public Health Law Clinic at the University of Maryland Carey School of Law and others during public briefing before the Senate Judicial Proceedings Committee, January 18. 2023

SB686 Testimony.pdf
Uploaded by: Judith Lorenz
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Judy Lorenz

DATE: February 23, 2023

My name is Judy Lorenz and my spouse is a survivor of child sex abuse. I am a Family Support Leader with SNAP (Survivors Network of those Abused by Priests).

Here are my testimonies from past years. I recently stared at my computer and keyboard wondering: What can I say this year to make a difference? I couldn't think of a thing. So, this year, I'm giving you highlights from all of these. Because I realize it's up to *you* to make the difference.

2015

My husband *tried* to tell me of his abuse before we got married. His attempt was convoluted which often happens when survivors first tell their story. From the little bit he was able to share, my horrified reaction shut him down. Ten years later he was forced to tell me, as his perp was publicly accused.

2016

I come here again imploring this body to vote yes. I begged Chairman Velario to stop stuffing the drawer and allow a vote to happen. I shared with a shaky voice the

reasons why victims cannot come forward with their stories, until much later in life - if at all. I sat with stomach churning and blood pressure rising, as the opposition made up stories about how harmful this legislation will be; So, I ask - what are you going to do about it? I hope with all of my heart that I will not have to testify again next year.

2019

Survivors have been in this chamber for decades seeking this type of legislation. We need a look back window so past victims can finally be heard. This law will not guarantee all survivors a big cash reward; just the *opportunity* to be heard and *perhaps receive* just compensation, *if* a judge or jury deems it appropriate. *Give* them that chance.

2020

I am here to say **ENOUGH!**

2021

This last one I submitted on behalf of survivors due to covid rules. It starts with a survivor quote: "He then put a gun to my head and pulled the trigger"… I quoted 15 more survivors and ended with this one: "And then, *I* am blamed for not speaking out earlier".

2023

See the pattern? You were voted in to make a difference. Please vote yes to SB686 this year. Make 2023 my last appearance.

Business Liability on Transfer Hoke on SB686.pdf
Uploaded by: Kathleen Hoke
Position: FAV

Law that Governs Transfer of Debts and Liabilities on Sale of a Corporation

Related to Senate Bill 686 (2023)

When a Maryland business is sold, Maryland corporate law and the agreement between the seller and buyer determine whether the new company bears the debts or liabilities of the old company. ***With four exceptions, a corporation that acquires the assets of another corporation is not liable for the debts and liabilities of the predecessor corporation.*** *Baltimore Luggage Co. v. Holtzman*, 80 Md. App. 282, 290 (1989). Exceptions include when: 1) there is an express or implied assumption of liability; 2) the transaction is a consolidation or merger; 3) the buyer is a mere continuation of the seller; or 4) the transaction is entered into fraudulently to escape liabilities for debts. *Id.*

The first exception reflects that the parties' agreement about the sale of the business governs. *See* §3-115 (c)(1) of the Md. Corps. & Ass'ns Code Ann. ("[T]he successor is liable for all the debts and obligations of the transferor *to the extent provided in the articles of transfer*."). If the documents governing the sale provide for the transfer of debts and liabilities, the successor corporation will be liable for the predecessor's debts. If the documents governing the sale do not provide for transfer of liability, such transfer may be implied based on other communications or conduct of the parties. Without explicit or implied transfer, the purchaser is not responsible for the debts and liabilities of the seller.

The second exception is for mergers and consolidations. A corporate merger or consolidation is governed by §3-114 of the Md. Corps & Ass'ns Code Ann., which provides that "the successor is liable for all the debts and obligations of each nonsurviving corporation, partnership, limited partnership, limited liability company, and business trust." Corporations that merge or consolidate under this section are bound by these statutory conditions. *Ramlall v. Mobilepro*, 202 Md. App. 20 (2011).

The third exception, for mere continuance of a company, is the most complicated and litigated exception because it requires an examination of the facts of the transfer—how the business was owned and operated originally and how it is now owned and operated. If the successor corporation is "substantially the same" as the predecessor corporation, a creditor may recover against the successor. *Baltimore Luggage,* 80 Md. App. at 297. 'Substantially the same' is described as a "change in form without a significant change in substance." *Id.* This exception protects creditors against business reorganization for the purpose of avoiding debts and liabilities.

The final exception is likewise designed to prevent a change in business that is designed to escape debts and liabilities. This is similarly a fact-specific analysis and is intended to protect creditors against fraudulent reorganization. Maryland courts have not had occasion to explain how a determination of fraud would be made but the *Baltimore Luggage* court did suggest that the Maryland Uniform Fraudulent Conveyance Act, Md. Comm. Code Ann. Title 15, Subtitle 2, could be helpful in making such a determination. 80 Md. App. at 618. For example, under the Act, a transaction for which no fair consideration is exchanged for assets is considered prima facie fraudulent.

There is ample Maryland statutory and case law to determine whether and when the sale of a corporation includes transfer of debts and liabilities. Nowhere in the Maryland Code are these rules altered for a particular type of tort or other civil claim.

Prepared by Professor Kathleen Hoke
University of Maryland Carey School of Law

Hoke PPT for January 19 Briefing FINAL.pdf
Uploaded by: Kathleen Hoke
Position: FAV

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Eliminating the So-Called Statute of Repose

Kathleen Hoke
*Law School Professor

January 19, 2023

*Any views expressed are those of Professor Hoke and do not represent the position of Maryland Carey Law; the University of Maryland, Baltimore; or the University of Maryland System

What is a Statute of Repose?

Long: A statute of repose establishes a time after which a person/entity is free from liability regardless of whether a claim has accrued. The limitations period begins to run at a specified time. Once the time expires, all claims of negligence are extinguished, even those that have not yet arisen.

Short: Statutes of repose ***set a date certain*** by which a person/entity is free of liability for negligence.

Purpose of a Statute of Repose

The purpose of a statute of repose is to ***prevent unpredictability*** for industry and professionals engaged in certain trades and professions and to protect insurers' ability to predict future claims. These protections allow for stability in the marketplace from which we all benefit.

Statute of Repose v. Statute of Limitations

Statute of Limitations (Procedural)

Sets a date by which a claim must be filed based on when the injured party knew or should have known of the harm and who caused it.

Statute of Repose (Procedural and Substantive)

Sets a date by which a claim must be filed regardless of whether the injured party is aware of injury and who caused it or whether the injury has even occurred.

Statute of Repose v. Statute of Limitations

Statutes of limitation may be changed by the legislature and those changes may be applied retroactively without constitutional concern in most circumstances.

Statutes of repose may be interpreted as providing a property right to a defendant whose negligence causes harm after passage of the established time. Altering a statute of repose retroactively may create additional burdens for a legislature.

Statute of Repose in Maryland: Purpose

In Maryland, the General Assembly uses statutes of repose to create vested property rights in "***consideration[] of the economic best interests of the public***."

SVF Riva Annapolis v. Gilroy, 459 Md. 632 (2018)

Maryland has only one statute of repose.

Statute of Repose in Maryland: Construction Industry

Courts & Judicial Proceedings §5-108 contains a "statute of repose" for ***improvements to real property and to related professionals*** who are ***highly regulated***.

Capital improvements are ***economic drivers***; this protection reflects the ***public interest in a strong economy***.

Statute of Repose: Construction Industry

Owner: No cause of action accrues for wrongful death, personal injury, or property damage caused by defective and unsafe condition if harm occurs ***more than 20 years after the date the improvement becomes available for use***.

Architect, Engineer, Contractor: ***10 years after the date the improvement becomes available.***

Exception: Asbestos; a public health concern.

Other Statutes of Repose in Maryland

Courts and Judicial Proceedings §5-117(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.

Courts and Judicial Proceedings §5-117 Uncodified Section 3

That the statute of repose under § 5–117(d) shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

Questions for 2023

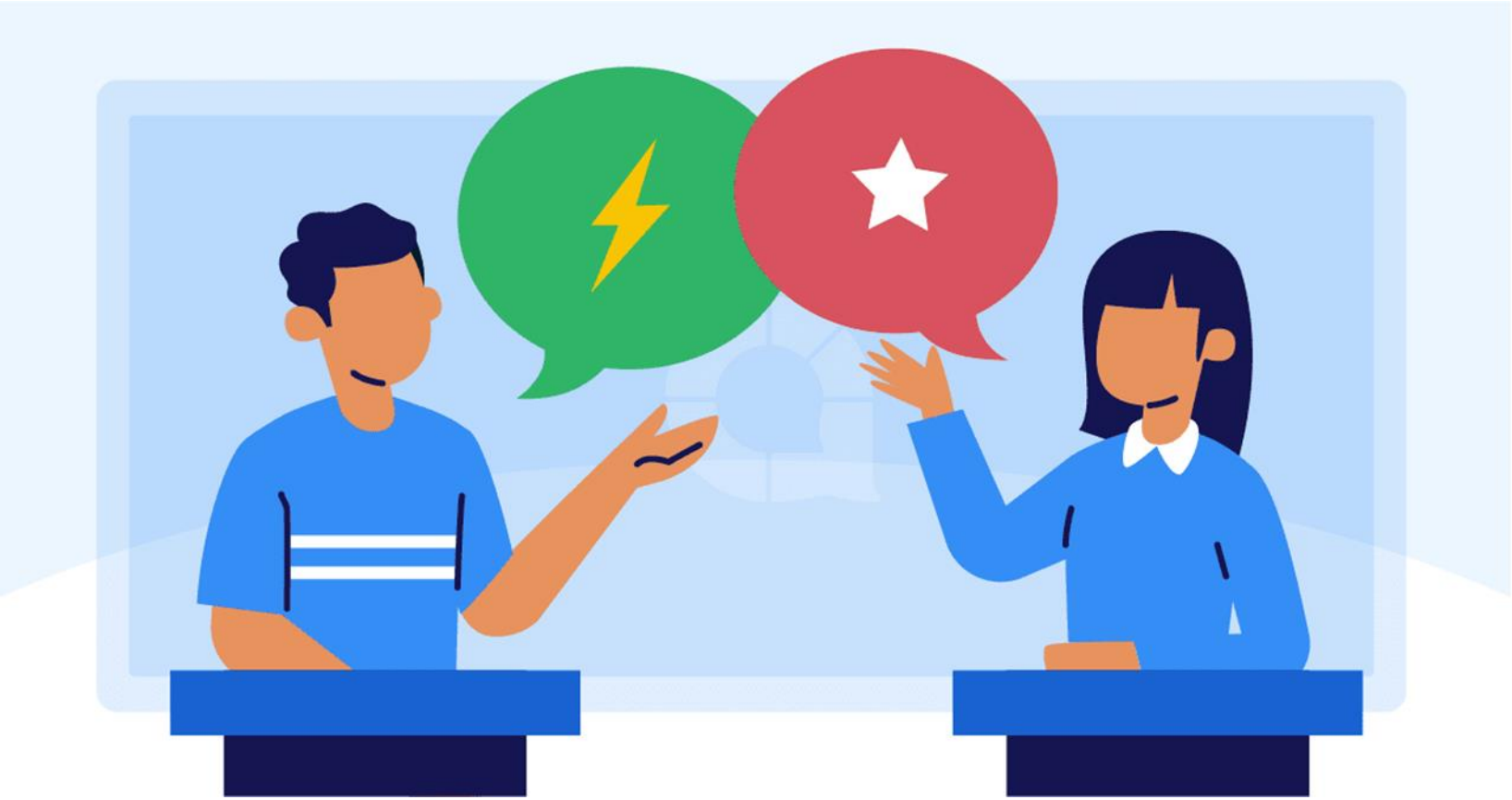
- ✓ ***Was a statute of repose created in 2017?***
- ✓ ***If so, what is the impact of repealing the statute of repose and having it apply retroactively?***

There is genuine debate on these questions.

The best answer is that the Supreme Court of Maryland will have to decide.

Was a Statute of Repose Created in 2017?

EARNEST DEBATE



Maryland Supremes on Statutes of Repose

Maryland courts look holistically to determine if a statute is one of limitation or one of repose.

Relevant in this inquiry are:

- ✓ what triggers the running of the period;
- ✓ whether the statute eliminates claims that have not yet accrued;
- ✓ purpose behind the statute; and
- ✓ legislative history surrounding passage.

***Anderson v. United States*, 427 Md. 99 (2012)**

Anderson: The trigger for a statute of repose period is unrelated to when injury occurs.

§5-108: Contractor/architect/engineer: once the building is available for use, the clock starts ticking. ***Completing the building—not the injury—starts the clock*** and ***claims for injuries that occur after 10 years are barred***.

§5-117: The ***injury must have occurred for the clock to start running***. There are no claims that could occur after the 20 years. ***Injury is the trigger.***

Language, history, and purpose support that no statute of repose was created.

The General Assembly is aware of the language used to create a statute of repose and does so in "***consideration[] of the economic best interests of the public***."

SVF Riva Annapolis v. Gilroy, 459 Md. 632 (2018)

Language Used in §5-117

Anderson: The General Assembly is aware of the language and conditions necessary to create a statute of repose and did so in §5-108 by using particular language that ***clearly extinguishes claims before they have accrued***.

No such language exists in §5-117; more like the medical malpractice statute in §5-109 found in *Anderson* to NOT be a statute of repose.

History: Intent of 2017 Legislature

The General Assembly never intended to create a vested right in entities that sheltered child sexual abusers.

- Full records for HB 642/SB 505 contain no discussion about constitutional implications of a statute of repose.
- Comments from members who passed the bill indicate no intention to grant permanent immunity.

History: Intent of 2017 Legislature

Delegate Atterbeary noted that permanent immunity from liability "***was never discussed***," and ***then JPR Chair Zirkin*** stated "***it wasn't anyone's intent" to grant permanent immunity***.

Erin Cox and Justin Moyer, *When Maryland Gave Abuse Victims More Time to Sue, it May Have Also Protected Institutions, Including the Catholic Church*, WASH POST (Mar. 31, 2019).

2019 and 2020 House Repeal

HB 687 (2019) and HB 974 (2020) would have repealed the so-called statute of repose:

- ✓ 2019: Passed House by a vote of 135-3 before failing in the Senate Judicial Proceedings Committee (5-5).
- ✓ 2020: Passed the House 127-0; not voted in the Senate Judicial Proceedings Committee (early closure due to the pandemic).

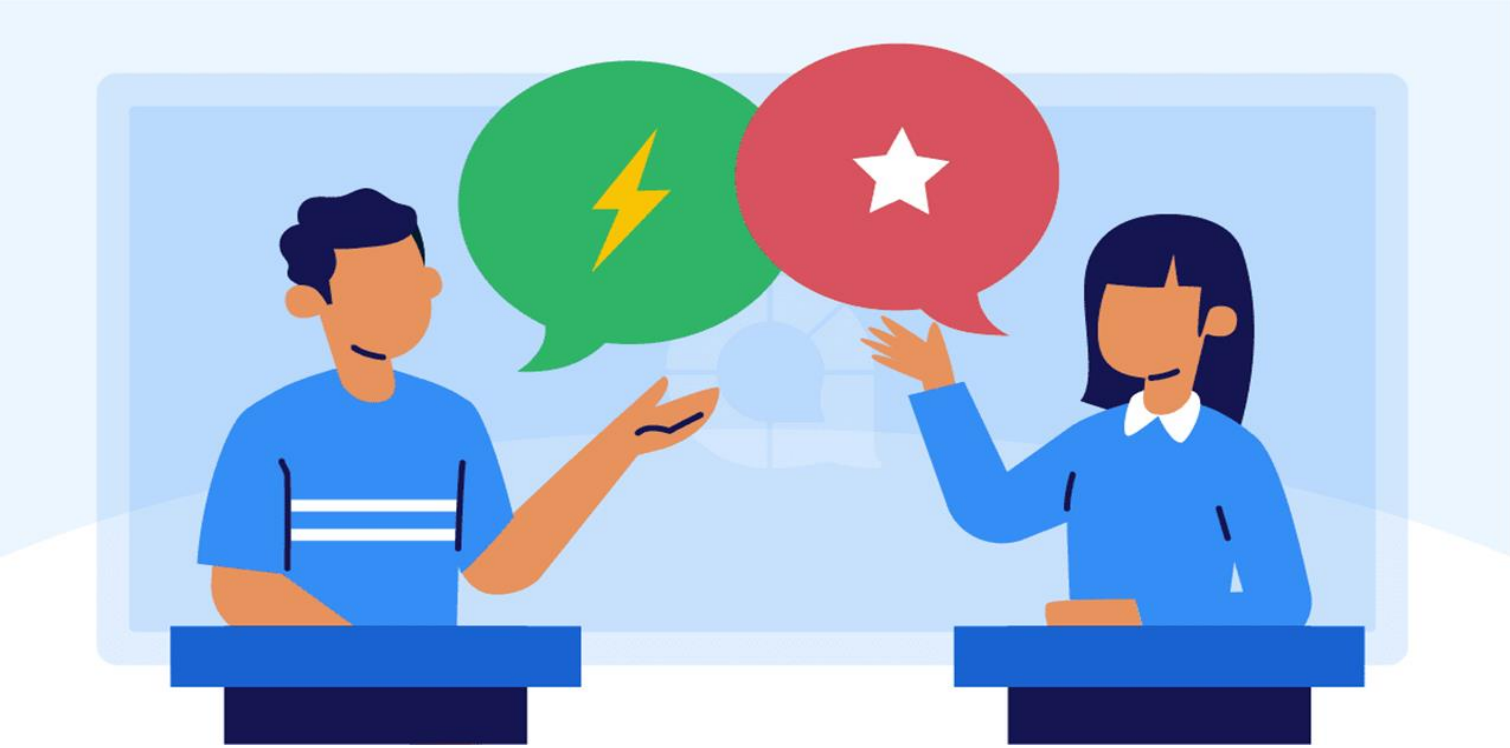
Purpose: To Protect Those Who Failed to Protect Children?

What could possibly be the purpose—the public benefit—of creating extraordinary protection through a statute of repose to **EVERY ORGANIZATION** that **NEGLIGENTLY** failed to protect children from sexual abuse?

Why would this protection exist even when such protection does not exist for medical malpractice or lesser torts?

Can a Statute of Repose be Repealed Retroactively?

EARNEST DEBATE



Attorney General Advice Letters

Rowe to Clippinger March 12, 2019

No case law in Maryland finding that revival of an extinguished claim is unconstitutional.

Rowe to Dumais March 16, 2019

Proposed 2-year lookback window would likely be found unconstitutional

Public Policy Supports Constitutionality

Repeat Question:

What could possibly be the purpose—the public benefit—of creating extraordinary protection through a statute of repose to **EVERY ORGANIZATION** that **NEGLIGENTLY** failed to protect children from sexual abuse?

Public Policy Supports Constitutionality

The public interest is best served by

- ✓ Allowing survivors the opportunity to prove the harm imposed on them and by whom and to seek compensation for the harm;

- ✓ Bringing public disclosure of the names of people who have sexually abused children, which will protect today's children from harm.

Repealing Gives Survivors the Opportunity to Seek Relief

Repealing with retroactive impact the so-called statute of repose added to §5-117 in 2017 will ***allow the survivors with revived claims to get to the courthouse***.

And this difficult question on the interpretation and application of the 2017 changes will be decided where it should be—the courts.

Questions?

Kathleen Hoke

Law School Professor

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Letter Hoke to Smith of 5-108 Retro with attachmen

Uploaded by: Kathleen Hoke

Position: FAV

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The Honorable William C. Smith, Jr.
Chair, Maryland Senate Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, MD 21401

January 25, 2023

Re: Child Victims Act of 2023: House Bill 1/Senate Bill (to-be-determined)

Chairman Smith:

I am writing in follow up to the Briefing on Child Sexual Abuse Prevention and Civil Statute of Limitations held in the Judicial Proceedings Committee on January 19, 2023. At the briefing, you asked whether the asbestos-related exception added to §5-108 of the Courts and Judicial Proceedings Article in 1991 had retroactive impact when passed. In short, the answer is yes. I reviewed the language of §5-108, the legislative file from 1991 when the exception was added through Senate Bill 335, and a letter of advice from the Office of the Attorney General related to Senate Bill 500 from 1990 that sought to add a similar exception. That research makes abundantly clear that: 1) the exception in §5-108 applies retroactively; 2) the General Assembly intended that retroactive application; and 3) the Office of the Attorney General advised that the change was constitutional in 1990 and 1991.

The language of §5-108 makes clear that the asbestos-related exception added in 1991 was to be applied retroactively. Section 5-108 creates a statute of repose applicable to improvements to real property. First passed in 1970, the legislation has been amended several times, most recently in 1991 to add an asbestos-related exception. Section 5-108(d)(2) provides that the time limitations set out in §5-108(a)(20 years for property owners) and (b)(10 years for architects, engineers, and builders) do not apply:

> (ii) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;
> (iii) In other causes of action for damages for personal injury or death caused by asbestos or a product that contains asbestos, the defendant is a manufacturer of a product that contains asbestos; or

(iv) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property:

1. The defendant is a manufacturer of a product that contains asbestos;
2. The damages to an improvement to real property are caused by asbestos or a product that contains asbestos;
3. The improvement first became available for its intended use after July 1, 1953;
4. The improvement:
    A. Is owned by a governmental entity and used for a public purpose; or
    B. Is a public or private institution of elementary, secondary, or higher education; and
5. The complaint is filed by July 1, 1993.

This language makes clear that when this exception became effective on July 1, 1991, claims for personal damages due to asbestos exposure are not subject to the limitations in subsections (a) and (b). §5-108(d)(2)(ii) and (iii).[1] Claims for property damages due to the presence of asbestos in a building[2] could be brought as to any structure made available for use after July 1, 1953. §5-108(d)(2)(iv)(3).[3] While the limitations set out in §5-108(a) and (b) would only allow claims for buildings made available 20 or 10 years prior, the new exception applied to buildings made available 38 years prior. There would be no reason to allow claims for 38-year-old buildings if the 20- or 10-year limitation applied. Moreover, in §5-108(d)(2)(iv)(5), the General Assembly set a 2-year deadline by which claims under this exception must be filed. This is a lookback window designed to allow expired claims to be brought within the two-year period after the effective date of the legislation. There would be no reason to establish a filing deadline if stale claims were not revived by the 1991 changes.

The uncodified language and legislative history of the 1991 changes likewise make evident that the changes were to apply retroactively, meaning reviving certain property damage claims that had been extinguished solely due to the passage of the 20- or 10-year limitation period. In fact, a close review of the uncodified language and the bill file reveals that there was little to no concern about allowing expired claims to be brought consistent with the 1991 changes. Rather, the aspect of retroactivity discussed was whether cases that had been finalized could be reopened as a result of the

[1] In late 1990, Maryland courts had determined that §5-108 did not apply to the vast majority of personal injury claims for asbestos exposure, those brought by workers who were exposure during building construction and renovation. Thus, the personal injury claim exclusion here became less important and was not the focus of the legislative discussion of Senate Bill 335 (1991) that created the exception. See Testimony of David Ianucci, Chief Legislative Officer to Governor William Donald Schaefer in bill file for Senate Bill 335 (1991).

[2] These damages are the cost of removal or remediation of asbestos.

[3] This exception was limited to buildings owned and used by the government and buildings used as public or private institutions for education, including higher education. The bill file reflects testimony related only to those types of property.

exception. The General Assembly rejected that aspect of retroactivity as is evident in uncodified section 2 of Senate Bill 335 (1991):

> [T]his Act does not apply to and may not be construed to revive property damage claims in any action for which a final judgment has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a partial summary judgment or court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.

The Floor Report accompanying Senate Bill 335 (1991) explains that the bill "excludes certain manufacturers and suppliers of asbestos products from the protection of the statute of repose" in §5-108. That Report likewise explains the restrictions on the retroactivity, noting that finalized claims could not be reopened; inherent in this is that claims that had not been filed or that had not been finalized would benefit from the changes. A document titled Committee Amendments explains that trial court cases in 1988 and 1989 held that the limitations in §5-108 precluded recovery for personal injury from asbestos exposure or property damage due to the presence of asbestos and that the 1991 amendments were designed to change those holdings. The Fiscal Note for Senate Bill 335 (1991) likewise makes clear that the changes would apply retroactively to cases that then pending and those yet-to-be filed:

> This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only those current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.

Senate Bill 335 was an Administration Bill, requested by then-Governor Schaefer, and his Chief Legislative Officer, David Ianucci, submitted testimony that similarly explained the impact of the bill. Mr. Ianucci noted that during the two-year period of July 1, 1991 to July 1, 1993, the statute of repose was waived and recovery would be available for claims except those that had been finalized before July 1, 1993.

In addition to these formal documents revealing the intended retroactive impact of Senate Bill 335 (1991), the bill fill contains written testimony from many entities and organizations that would benefit from the retroactive application of the exception. For example, testimony from the Archdiocese of Baltimore and the Archdiocese of Washington (with Maryland-based parochial schools) described the significant expenses associated with asbestos remediation in their school buildings, identifying the dates of construction of those buildings going back to the 1950s. In fact, those organizations and the Maryland Catholic Conference requested that the changes be even further retroactive, asking that the changes apply to buildings made available from 1950 forward, not just those from 1953 forward, arguing that many of their school buildings were constructed between 1950 and 1952. Likewise, support for the legislation from the Maryland Association of Boards of Education and individual county

boards of education and school systems explains the profoundly negative fiscal impact if they are not permitted to bring claims that would be revived by the 1991 exception.

Many of the documents in the bill file provide context that makes clear that the 1991 amendments were to apply retroactively. Asbestos was used prolifically in construction throughout the United States for more than 70 years, with the devastating health impact of exposure unknown. By the time individuals became aware of the connection between asbestos exposure and long-term health consequences, their claims were likely barred by §5-108. This is also the case for entities that became aware of the harms and the need to remediate properties that contain asbestos. Because §5-108 is a statute of repose that begins to run upon availability of the property, personal injury and property damage claims were terminated before individuals and entities could have brought suit. The balance of equities at the time dictated a lifting of the statute of repose to revive those claims. Consistent with the context, unambiguous and thorough documents in the bill file for Senate Bill 335 (1991) lead to the conclusion that the 1991 amendments were to be applied in a manner that would revive stale claims.

The inescapable conclusion is that the 1991 changes to §5-108 were applied retroactively, reviving asbestos-related personal injury and property damage claims that had been extinguished by the statute of repose. And the Office of the Attorney General found the revival constitutional. In the letter of review for constitutional sufficiency on Senate Bill 335 (1991), then-Attorney General J. Joseph Curran, Jr., explained: "We have previously advised that the statute of repose may be altered retroactively without violating due process. See letter to Delegate David. B. Shapiro from Kathryn M. Rowe dated February 15, 1990." That letter is found in the bill file for Senate Bill 500 (1990), a predecessor to Senate Bill 335 (1991) that was passed and then vetoed by then-Governor Schaefer. I have attached it here as well. Although full analysis of the constitutionality of the revival of claims by lifting or expanding a statute of limitations or repose is beyond the scope of this letter, the 1990 Rowe letter is direct and clear: "In conclusion, it is my view that § 5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive."

I hope this letter answers your question on the retroactivity of the 1991 changes to §5-108. Please let me know how I can further support your work on this issue.

Very truly yours,

cc: Chairman C. T. Wilson

Sen. Stone

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WASHINGTON METROPOLITAN AREA 858-3889
TTY FOR DEAF - ANNAPOLIS 841-3814 - D.C. METRO 858-3814

February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

---

1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that established the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

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Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
>
> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ___ F.Supp. ___ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

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February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

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1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that established the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

While recognizing that the mine operators may not have known of the dangers, and had possibly acted in reliance upon their lack of liablity, the Court found that the Act was a rational measure to spread the costs of employee disability to those who have profited from the fruits of their labor. Id. at 18.

Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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8 The sole mention of manufacturers is a passing in the testimony of an opponent, Wallace Dann, see Judiciary Committee Minutes, June 24, 1969, p. 3.

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10 Whiting-Turner Contracting Co. v. Coupard, 304 Md. 304 (1985), has been cited as evidence that the section appies to suppliers of building materials and equipment. That question was not an issue in the case, however, and the passing reference to suppliers no more settles the issue of their inclusion than the omission of any mention of suppliers in (continued)

Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
>
> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ___ F.Supp. ___ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

Support SB 686 Hoke Testimony with attachments 022
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UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

TESTIMONY IN SUPPORT OF SENATE BILL 686

Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations
The Child Victims Act of 2023

Senate Judicial Proceedings Committee
February 23, 2023
Submitted by Professor Kathleen Hoke

I am writing in support of Senate Bill 686 and to address concerns related to the retroactive application of the legislation. This bill will provide the possibility of relief for survivors of child sexual abuse whose claims expired due to the passage of the relevant limitations period. Although concerns about the constitutionality of the retroactive application of the bill are understandable, it is likely that the bill will survive constitutional scrutiny.

Senate Bill 686 would eliminate the limitations period for civil claims of child sexual abuse, allowing claims to be filed at any time. The change would apply retroactively, reviving claims that had been time barred under previous versions of the statute. The bill would also cap damages on revived claims against private plaintiffs and on revived and future claims against state and local governments and county boards of education. Advocates and the supporting medical and legal experts will no doubt thoroughly explain to the Committee the strong public policy reasons for the legislation. This testimony will address the question on the constitutionality of the retroactive application of the legislation.

Legislation that revives a time-barred claim is rightfully subject to constitutional scrutiny. That is particularly true in this instance because of language added to Courts and Judicial Proceedings §5-117 in 2017, extending the then-8-year statute of limitations to 20 years and purportedly creating a statute of repose in the process. Senate Bill 686 provokes the question of whether §5-117 is a statute of repose or of limitations, whether that distinction matters, and whether the limitations period can be repealed with retroactive effect in either case. These are relevant questions for a conscientious legislator to consider before voting on the bill. The best answer is that Senate Bill 686 would survive constitutional scrutiny.

In 2017, the General Assembly passed House Bill 642 (Chapter 12) and Senate Bill 505 (Chapter 56), amending §5-117 to extend the statute of limitations for civil claims of child sexual abuse to the later of: 1) twenty years after the victim reaches the age of majority, or 2) three years after the date on which a perpetrator is convicted of child sexual abuse against the victim. If a claim is brought more than seven years after the alleged sexual assault against a person or governmental entity who is not the perpetrator, the plaintiff must prove that the person or governmental entity "owed a duty of care to the victim," employed or otherwise exercised control over the perpetrator, and acted with gross negligence. §5-117(c). At the same time, the General Assembly added §5-117(d), which provides that *"[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*."

In uncodified language, the General Assembly added that "*the statute of repose under §5-117(d) . . . shall be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017*." The fundamental question that must be answered to determine the constitutionality of Senate Bill 686 is whether §5-117[1] creates a vested right deserving constitutional protection.

Maryland courts have struggled to cleanly define statute of repose and to distinguish between statutes of repose and statutes of limitations. Close reading of Maryland case law reveals judicial disfavor of statutes of repose. Examination of two Maryland statutes—one found to be a constitutional statute of repose and another found to be a statute of limitations—elucidates the distinction between the two and the narrowness of what constitutes a statute of repose. Moreover, even if §5-117 is a statute of repose, retroactive expansion of the limitations period may be constitutional. Indeed, the General Assembly has previously expanded a statute of repose, Courts and Judicial Proceedings §5-108 applicable to improvements to real property, with retroactive application.

STATUTES OF REPOSE AND STATUTES OF LIMITATION GENERALLY

The functional difference between a statute of repose and a statute of limitations is that the trigger that starts a repose period is unrelated to injury; it sets a fixed date by which all claims are extinguished. By contrast, the period set in a statute of limitations does not begin to run until the plaintiff is injured by the defendant, meaning that when a claim has accrued, the statute begins to run.

A statute of limitations sets a date by which an injured person must file a civil cause of action against the individual or entity that caused the harm. The trigger that starts the clock is the injury; once a person is aware or should be aware of an injury, they have a set time by which to file a claim. For example, if a person is injured in a vehicle crash due to the negligence of another driver, the statute of limitations for bringing a negligence claim, 3 years in Maryland, begins to run at the time of the crash. Statutes of limitations exist for all civil claims and are typically tolled, or paused, under certain circumstances, such as while the injured party is a minor or under some disability. For example, if a child was injured in the vehicle crash, the 3-year limitations period is tolled until the child reaches age 18. Claims filed by age 21 would be timely. The purpose of a statute of limitations is "to spare the courts from litigating stale claims" and to protect against cases involving lost evidence and faded memories. *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). Because statutes of limitations exist only for the public policy purpose of encouraging plaintiffs to file timely claims, they do not create vested rights. *Id.* Generally, statutes of limitations are procedural and may be changed with retroactive effect without invoking constitutional inquiry.

A statute of repose establishes a time after which a defendant is free from liability for a civil claim regardless of whether a claim has accrued. The limitations period in a statute of repose is triggered not by an injury but by some other act. There are only a couple of types of

[1] Hereafter when referring to §5-117, I mean to include the uncodified language added in 2017 as Section 3 in House Bill 642 (Chapter 12, 2017); Senate Bill 505 (Chapter 56, 2017).

statutes of repose; they are unusual and most states have only one or two such provisions. The two most common statutes of repose nationally are those relating to real property improvements and those relating to product liability. For real property improvements, completion of the building triggers the running of the limitations clock, setting a date certain by which architects, engineers, and builders are free of liability. If an individual suffers injury caused by a building design defect after the limitations period expires, they may not bring a claim against the architect or engineer for negligent design. In product liability statutes of repose, the limitations clock is triggered when the product enters the stream of commerce, likewise setting a date certain by which a manufacturer may not be subject to certain claims. Statutes of repose typically do not contain tolling provisions; all claims are extinguished on the set date. The purpose of a statute of repose is to prevent unpredictability for industry and professionals engaged in certain trades and to protect insurers' ability to predict future claims in those industries. These protections allow for stability in the marketplace from which we all benefit. In Maryland, the General Assembly uses statutes of repose in "consideration[] of the economic best interests of the public." *SVF Riva Annapolis v. Gilroy*, 459 Md. 632 (2018). Changing a statute of repose retroactively and reviving extinguished claims raises the constitutional question of whether the statute created a vested right and whether revival of claims unreasonably interferes with that right.

MARYLAND COURTS ON STATUTES OF REPOSE

Maryland courts "look holistically at [a] statute and its history to determine whether it is akin to a statute of limitation or a statute of repose." *Anderson v. United States*, 427 Md. 99, 124 (2012). Relevant in this inquiry are: 1) what triggers the running of the statutory period; 2) whether the statute eliminates claims that have not yet accrued; 3) the purpose behind the statute; and 4) the legislative history surrounding passage of the statute. *Id.*

Prongs one and two of the analysis are related because the determination of what triggers the running of a time period determines whether claims that have not yet accrued are extinguished by the statute. "Statutes of repose differ from statutes of limitation in that the trigger for a statute of repose period is unrelated to when the injury . . . occurs. . . . Thus, a statute of repose may extinguish a potential plaintiff's right to bring a claim before the cause of action accrues." *Id*. at 118-19. Similarly, prongs two and three of the analysis are related because courts typically determine the purpose of the statute using the language of the statute and the legislative history behind its adoption.

Within this framework, Maryland courts have exhibited reluctance to interpret legislation as creating a statute of repose and have narrowly interpreted the one statute of repose in the Maryland Code. The Supreme Court of Maryland had variously referred to Courts and Judicial Proceedings §5-109 as a statute of repose and a statute of limitations. *See id.* at 127.[2] This section provides that a medical malpractice action must be filed the earlier of 1) within 5 years of the "time the injury was committed" or 2) within 3 years of when the injury was discovered. In either case, an injury has occurred prior to running of the period set.

[2] The court discusses a series of cases analyzing §5-109 in which the statute is referred to as a statute of limitations and a statute of repose; the court appears apologetic about its contribution to confusion about the substantive impact of §5-109 as a result of the changing terminology used to describe the statute. *Anderson v. United States*, 427 Md. 99, 113-17 (1985).

In 2012, the *Anderson* court held that §5-109 is a statute of limitations, creating no vested rights. In reaching this conclusion, the *Anderson* court relied on the fact that the trigger for the running of the time period in the statute is when the injury occurred, not an unrelated event, and that §5-109 did not extinguish claims that had not yet accrued because injury was necessary to start the running of the time period. 427 Md. at 125-26.

The court was also persuaded by the fact that §5-109 contains tolling provisions, meaning the statute provides for conditions under which the running of the period for filing a claim is paused, or tolled. *Id*. at 126 (noting tolling during the plaintiff's age of minority or if the defendant engaged in fraudulent concealment). Tolling is the hallmark of a statute of limitations and antithetical to a statute of repose.

And the *Anderson* court compared the language in §5-109 with the language in §5-108 relating to claims of faulty building design or construction, a provision previously held to be a statute of repose. *See, e.g., Whiting-Turner Contracting Company v. Coupard*, 304 Md. 340 (1985)(applying §5-108 to bar a claim that had not accrued prior to the expiration of the time period set in the statute, identified as a statute of repose). The *Anderson* court explained that the General Assembly was aware of how to create a statute of repose—as it did so in §5-108 with language clearly indicating a cause of action "does not accrue" if the injury that would give rise to a cause of action occurs after the time period set in §5-108 runs. Moreover, the court reached its conclusion despite finding that §5-109 was adopted for the purpose of balancing economic interests and providing market stability for medical malpractice insurers and their insureds. *Anderson*, 327 Md. at 124-25. That fact alone was unpersuasive. Section 5-109, with injury as the triggering event to begin the running of the established time period, not extinguishing claims that have not accrued, and with certain conditions tolling the running of the period, was found to be a statute of limitations. Note that while the *Anderson* court set out prongs 3 and 4—statutory language and legislative intent—as relevant, the inquiry turned almost exclusively on prong 1 and 2—the trigger and extinguishing claims before injury occurred.

MARYLAND'S STATUTE OF REPOSE, COURTS AND JUDICIAL PROCEEDINGS §5-108

The statute of repose used as a comparator in *Anderson* is §5-108, limiting claims against property owners, construction companies, engineers, and architects for injuries sustained as a result of negligence in building design and construction. Section 5-108 operates to extinguish claims at year 20 (building owners) or year 10 (architects, engineers, and builders), even if no injury has occurred. The triggering event for the start of the running of the clock is the date the building "became available for its intended use," an event wholly unrelated to any injury. For example, in *Whiting-Turner*, the court found that the builder-defendant could not be held liable for the plaintiff's injury even if the builder had been negligent because the plaintiff was injured more than 10 years after the building was available for its intended use.

Maryland courts are loathe to construe that statute broadly, revealing the disfavor for statutes of repose hinted at in *Anderson*. Statutes of repose are extraordinary and unusual provisions. Because they may be construed as creating vested rights, such provisions should

be narrowly construed. In *SVF Riva Annapolis*, 495 Md. 632 (2018), the Supreme Court of Maryland broadly construed an exception in §5-108 so that the statute of repose does not prevent a cause of action against an owner who remains in possession of the property for the full period in the statute. And in *Carven v. Hickman*, 135 Md. App. 645 (2000), the Appellate Court of Maryland found §5-108 inapplicable to a case concerning the use of real property. Maryland's only statute of repose is narrowly construed, limiting the negative impact of this extraordinary provision.

In addition to the judiciary's disposition against broad application of statutes of repose, the General Assembly has been conservative in creating statutes of repose and has determined that statutes of repose may be changed with retroactive impact reviving claims. As noted, Maryland has only one statute of repose, §5-108. That statute contains an exception that allows certain claims related to asbestos to be made after expiration of the repose period. Claims of personal injury related to asbestos exposure are excepted from the statute of repose. Certain claims of property damage due to the presence of asbestos are also excepted. When the asbestos exception was added to §5-108 in 1991, the exceptions applied retroactively to revive claims that had been extinguished. For the claims of property damage, claims related to buildings constructed as far back as 1953 were revived; those revived claims had to be filed within a two-year period of the effective date of the bill containing the asbestos exceptions. The Attorney General advised that retroactive application of the asbestos exception was constitutional. For a thorough explanation of the 1991 amendments, the General Assembly's revival of expired claims, and the Attorney General's 1990 advice confirming the constitutionality of the amendments, *see* Letter to Chairman Will Smith from Kathleen Hoke, dated January 25, 2023 (attached; the 1990 letter from the Attorney General's Office is attached to the Smith letter).

Not only are statutes of repose rare and disfavored in Maryland, they can be repealed with retroactive application.

IS §5-117 A STATUTE OF REPOSE OR OF LIMITATIONS? MAY THE TIME BAR SET IN THAT SECTION, WHETHER REPOSE OR LIMITATIONS, BE REPEALED WITH RETROACTIVE APPLICATION?

Applying the *Anderson* test, §5-117 should not be considered a statute of repose. First, one must look to determine the triggering event for the running of the 20-year time period and whether the statute extinguishes claims that have not yet accrued. Like in §5-109, the medical malpractice statute found not to be a statute of repose, claims subject to §5-117 arise as a result of a perpetrator's actions that cause injury; the period of time does not begin to run until there has been an injury. Moreover, §5-117 does not extinguish claims that have not yet accrued. The *Anderson* court found this persuasive in finding §5-109 to be a statute of limitations; a court would likely find this point similarly persuasive for §5-117. Additionally, §5-117 contains a tolling provision like §5-109, suspending the running of the period during the victim's period of minority. As a result, there is no date certain on which an act of sexual assault automatically expires like the actions that expire as a result of the application of the statute of repose in §5-108. As noted in *Anderson*, tolling the period during an injured person's period of minority is a trait found in statutes of limitations, not statutes of repose.

The language of the statute is likewise helpful in determining whether §5-117 is a statute of repose or limitations. The *Anderson* court notes that the Maryland General Assembly is aware of the language and conditions necessary to create a statute of repose as the legislature did so in §5-108 by using particular language that clearly extinguishes claims before they have accrued. 304 Md. at 126; §5-108 (relevant causes of action "do not accrue" if the period of time has passed). No such language or substantive provision exists in §5-117; again, pushing to the conclusion that §5-117 is not a statute of repose. The mere fact that the term "repose" is used in §5-117(d) and in the uncodified language passed in 2017 does not alter this analysis. *See Kaczorowski v. City of Baltimore*, 309 Md. 505, 514-15 (1987)(courts are not limited to the words of the statute when discerning meaning).

The *Anderson* court considered the intent of the legislature with respect to §5-108 and found validity to the assertion that the statute was adopted in response to a perceived crisis related to medical malpractice litigation that caused skyrocketing malpractice insurance rates and increasing numbers of malpractice actions against Maryland physicians. The legislature had considered the economic best interests of the public when passing §5-108. *Anderson,* 304 Md. at 124-25; *see also SVF Riva Annapolis*, 459 Md. at 636 n.1 (legislature creates a statute of repose in "consideration[] of the economic best interests of the public"); *Carven*, 135 Md. App. at 652 (statute of repose reflects a "legislative balanc[ing]of economic considerations affecting the general public and the respective rights of the plaintiffs and defendants"). But this was not enough to support a finding that the statute was one of repose rather than of limitations. No such legislative history related to a consideration of the economic interests of the public exists for the 2017 changes. In fact, there appears to be no legislative history regarding the so-called repose provisions that were added via amendment. Sufficient, clear evidence of legislative intent is expected for an extraordinary provision like a statute of repose.

Applying the appropriate analysis to §5-117 results in finding the provision to be a statute of limitations, not a statute of repose. The period of limitations runs as a result of an injury, is tolled during the victim's period of minority, and does not extinguish claims before they have accrued.

Moreover, public policy weighs heavily against finding §5-117 to be a statute of repose. The State has just one statute of repose; §5-108 protects property owners, contractors, and design professionals from negligence claims for 10 or 20 years after a building is completed and available for its intended use. Protecting those engaged in designing and constructing buildings does support economic stability for these professionals and their insurers, perhaps an appropriate use of the extraordinary statute of repose given that real property improvements are a significant driver of the Maryland economy. But allowing a statute of repose for those who sheltered child predators is quite a different matter. To be sure, private and public entities that may be liable for child sexual assault committed by people employed or supervised by the entities could benefit from the stability of knowing that at some point a child's claim is extinguished. That would be true for any tortfeasor. Public policy cuts against such protection for those who harbor offenders who commit atrocious acts of violence against children.

Even if §5-117 is a statute of repose, repeal of the statute with retroactive application should survive constitutional scrutiny. The best support for this conclusion is that the General Assembly has repealed a portion of the one statute of repose in Maryland and explicitly revived previously extinguished claims in doing so. As explained briefly above and more fully in the attached letter to Chairman Smith, in 1991, the General Assembly created an exception in §5-108 that applied retroactively to revive personal injury and property damage claims related to asbestos. Attached to the letter to Chairman Smith is the 1990 advice from the Attorney General that repeal with retroactive application was constitutional. The Attorney General confirmed this conclusion when he submitted the letter of constitutional sufficiency on the 1991 bill that created the asbestos exception with retroactive application.

Opponents argue that Maryland courts do not permit retroactive provisions like those in Senate Bill 686, regardless of whether §5-117 is a statute of repose or limitations. They rely on two primary cases in making that argument. First, opponents suggest that *Dua v. Comcast Cable*, 370 Md. 604 (2002) found that the Maryland Constitution prohibits legislation reviving an expired cause of action. While *Dua* did hold that "retroactively abolishing an accrued cause of action, depriving the plaintiff of a vested right," violates the Maryland Constitution, the issue of reviving an extinguished claim was not presented to the court. *Dua* involved two statutes: 1) a statute that allowed cable companies to impose late fees that would apply retroactively to terminate cases filed by customers who had paid late fees paid before such fees were lawful; and 2) a statute that allowed HMOs to seek subrogation against funds paid to insureds by others who caused the injury for which the HMO covered medical expenses, terminating cases that insureds had or could file seeking return of monies they had paid in subrogation before HMOs were permitted to seek subrogation. The *Dua* court found that both statutes abolished claims in violation of the Maryland Constitution. Although the court noted that revival of extinguished claims may be unconstitutional, that language is dicta as the case involved terminating claims rather than reviving them.

Second, opponents rely on *Smith v. Westinghouse*, 266 Md. 52 (1972), which involved expansion of the statute of limitations for wrongful death cases to be applied retroactively. Although the *Smith* court found the retroactive application unconstitutional, it did so principally on the basis that the statute at issue was not an ordinary statute of limitations but one that established filing a claim as a condition precedent to the cause of action. This was because the statute of limitations was created at the same time as the cause of action for wrongful death. Frankly, the case is muddled and difficult to comprehend and hardly a clear statement by the court that any revival of an expired civil claim in unconstitutional. Note also that in determining that the 1991 retroactive changes to §5-108 were constitutional, the Attorney General considered the *Smith* case and dismissed its applicability. In the letter of advice, the Attorney General's Office concluded that the Maryland courts had not extended the rationale of *Smith* beyond the narrow circumstance of the creation of a cause of action for wrongful death. *See* Letter to Chairman Smith from Kathleen Hoke, dated January 25, 2023 (attaching Attorney General letter from 1990).

CONCLUSION

Section 5-117 of the Courts and Judicial Proceedings Article does not meet the criteria necessary to be considered a statute of repose; rather, it should be considered a statute of limitations. Regardless, statutes of repose in Maryland may be subject to change with retroactive impact reviving expired claims. The General Assembly took such action with the statute of repose in §5-108 in 1991, with the Attorney General advising that the legislative change was constitutional. Moreover, there is no case law in Maryland establishing that a statute of repose or a statute of limitations may not be changed to revive extinguished claims. As a result, legislators should feel confident that voting favorably on Senate Bill 686 does not equate to voting for an unconstitutional bill and does equate to voting for effective, fair, and compassionate public policy.

This testimony is submitted by Professor Kathleen Hoke and may not represent the position of the University of Maryland Carey School of Law; the University of Maryland, Baltimore; or the University of Maryland System.

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The Honorable William C. Smith, Jr.
Chair, Maryland Senate Judicial Proceedings Committee
Miller Senate Office Building
Annapolis, MD 21401

January 25, 2023

Re: Child Victims Act of 2023: House Bill 1/Senate Bill (to-be-determined)

Chairman Smith:

I am writing in follow up to the Briefing on Child Sexual Abuse Prevention and Civil Statute of Limitations held in the Judicial Proceedings Committee on January 19, 2023. At the briefing, you asked whether the asbestos-related exception added to §5-108 of the Courts and Judicial Proceedings Article in 1991 had retroactive impact when passed. In short, the answer is yes. I reviewed the language of §5-108, the legislative file from 1991 when the exception was added through Senate Bill 335, and a letter of advice from the Office of the Attorney General related to Senate Bill 500 from 1990 that sought to add a similar exception. That research makes abundantly clear that: 1) the exception in §5-108 applies retroactively; 2) the General Assembly intended that retroactive application; and 3) the Office of the Attorney General advised that the change was constitutional in 1990 and 1991.

The language of §5-108 makes clear that the asbestos-related exception added in 1991 was to be applied retroactively. Section 5-108 creates a statute of repose applicable to improvements to real property. First passed in 1970, the legislation has been amended several times, most recently in 1991 to add an asbestos-related exception. Section 5-108(d)(2) provides that the time limitations set out in §5-108(a)(20 years for property owners) and (b)(10 years for architects, engineers, and builders) do not apply:

> (ii) In a cause of action against a manufacturer or supplier for damages for personal injury or death caused by asbestos or a product that contains asbestos, the injury or death results from exposure to asbestos dust or fibers which are shed or emitted prior to or in the course of the affixation, application, or installation of the asbestos or the product that contains asbestos to an improvement to real property;
> (iii) In other causes of action for damages for personal injury or death caused by asbestos or a product that contains asbestos, the defendant is a manufacturer of a product that contains asbestos; or

(iv) In a cause of action for damages for injury to real property that results from a defective and unsafe condition of an improvement to real property:

1. The defendant is a manufacturer of a product that contains asbestos;
2. The damages to an improvement to real property are caused by asbestos or a product that contains asbestos;
3. The improvement first became available for its intended use after July 1, 1953;
4. The improvement:
    A. Is owned by a governmental entity and used for a public purpose; or
    B. Is a public or private institution of elementary, secondary, or higher education; and
5. The complaint is filed by July 1, 1993.

This language makes clear that when this exception became effective on July 1, 1991, claims for personal damages due to asbestos exposure are not subject to the limitations in subsections (a) and (b). §5-108(d)(2)(ii) and (iii).[1] Claims for property damages due to the presence of asbestos in a building[2] could be brought as to any structure made available for use after July 1, 1953. §5-108(d)(2)(iv)(3).[3] While the limitations set out in §5-108(a) and (b) would only allow claims for buildings made available 20 or 10 years prior, the new exception applied to buildings made available 38 years prior. There would be no reason to allow claims for 38-year-old buildings if the 20- or 10-year limitation applied. Moreover, in §5-108(d)(2)(iv)(5), the General Assembly set a 2-year deadline by which claims under this exception must be filed. This is a lookback window designed to allow expired claims to be brought within the two-year period after the effective date of the legislation. There would be no reason to establish a filing deadline if stale claims were not revived by the 1991 changes.

The uncodified language and legislative history of the 1991 changes likewise make evident that the changes were to apply retroactively, meaning reviving certain property damage claims that had been extinguished solely due to the passage of the 20- or 10-year limitation period. In fact, a close review of the uncodified language and the bill file reveals that there was little to no concern about allowing expired claims to be brought consistent with the 1991 changes. Rather, the aspect of retroactivity discussed was whether cases that had been finalized could be reopened as a result of the

[1] In late 1990, Maryland courts had determined that §5-108 did not apply to the vast majority of personal injury claims for asbestos exposure, those brought by workers who were exposure during building construction and renovation. Thus, the personal injury claim exclusion here became less important and was not the focus of the legislative discussion of Senate Bill 335 (1991) that created the exception. See Testimony of David Ianucci, Chief Legislative Officer to Governor William Donald Schaefer in bill file for Senate Bill 335 (1991).

[2] These damages are the cost of removal or remediation of asbestos.

[3] This exception was limited to buildings owned and used by the government and buildings used as public or private institutions for education, including higher education. The bill file reflects testimony related only to those types of property.

exception. The General Assembly rejected that aspect of retroactivity as is evident in uncodified section 2 of Senate Bill 335 (1991):

> [T]his Act does not apply to and may not be construed to revive property damage claims in any action for which a final judgment has been rendered and for which appeals, if any, have been exhausted before July 1, 1991, to any property damage claim precluded by a partial summary judgment or court imposed deadline before July 1, 1991, or to any settlement or agreement between parties to the litigation negotiated before July 1, 1991.

The Floor Report accompanying Senate Bill 335 (1991) explains that the bill "excludes certain manufacturers and suppliers of asbestos products from the protection of the statute of repose" in §5-108. That Report likewise explains the restrictions on the retroactivity, noting that finalized claims could not be reopened; inherent in this is that claims that had not been filed or that had not been finalized would benefit from the changes. A document titled Committee Amendments explains that trial court cases in 1988 and 1989 held that the limitations in §5-108 precluded recovery for personal injury from asbestos exposure or property damage due to the presence of asbestos and that the 1991 amendments were designed to change those holdings. The Fiscal Note for Senate Bill 335 (1991) likewise makes clear that the changes would apply retroactively to cases that then pending and those yet-to-be filed:

> This bill, in essence, eliminates the applicable statute of limitations (10-year and 20-year time period) and allows not only those current cases to continue their legal course of action absent a statutory time limit but subsequent cases filed as well.

Senate Bill 335 was an Administration Bill, requested by then-Governor Schaefer, and his Chief Legislative Officer, David Ianucci, submitted testimony that similarly explained the impact of the bill. Mr. Ianucci noted that during the two-year period of July 1, 1991 to July 1, 1993, the statute of repose was waived and recovery would be available for claims except those that had been finalized before July 1, 1993.

In addition to these formal documents revealing the intended retroactive impact of Senate Bill 335 (1991), the bill fill contains written testimony from many entities and organizations that would benefit from the retroactive application of the exception. For example, testimony from the Archdiocese of Baltimore and the Archdiocese of Washington (with Maryland-based parochial schools) described the significant expenses associated with asbestos remediation in their school buildings, identifying the dates of construction of those buildings going back to the 1950s. In fact, those organizations and the Maryland Catholic Conference requested that the changes be even further retroactive, asking that the changes apply to buildings made available from 1950 forward, not just those from 1953 forward, arguing that many of their school buildings were constructed between 1950 and 1952. Likewise, support for the legislation from the Maryland Association of Boards of Education and individual county

boards of education and school systems explains the profoundly negative fiscal impact if they are not permitted to bring claims that would be revived by the 1991 exception.

Many of the documents in the bill file provide context that makes clear that the 1991 amendments were to apply retroactively. Asbestos was used prolifically in construction throughout the United States for more than 70 years, with the devastating health impact of exposure unknown. By the time individuals became aware of the connection between asbestos exposure and long-term health consequences, their claims were likely barred by §5-108. This is also the case for entities that became aware of the harms and the need to remediate properties that contain asbestos. Because §5-108 is a statute of repose that begins to run upon availability of the property, personal injury and property damage claims were terminated before individuals and entities could have brought suit. The balance of equities at the time dictated a lifting of the statute of repose to revive those claims. Consistent with the context, unambiguous and thorough documents in the bill file for Senate Bill 335 (1991) lead to the conclusion that the 1991 amendments were to be applied in a manner that would revive stale claims.

The inescapable conclusion is that the 1991 changes to §5-108 were applied retroactively, reviving asbestos-related personal injury and property damage claims that had been extinguished by the statute of repose. And the Office of the Attorney General found the revival constitutional. In the letter of review for constitutional sufficiency on Senate Bill 335 (1991), then-Attorney General J. Joseph Curran, Jr., explained: "We have previously advised that the statute of repose may be altered retroactively without violating due process. See letter to Delegate David. B. Shapiro from Kathryn M. Rowe dated February 15, 1990." That letter is found in the bill file for Senate Bill 500 (1990), a predecessor to Senate Bill 335 (1991) that was passed and then vetoed by then-Governor Schaefer. I have attached it here as well. Although full analysis of the constitutionality of the revival of claims by lifting or expanding a statute of limitations or repose is beyond the scope of this letter, the 1990 Rowe letter is direct and clear: "In conclusion, it is my view that § 5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive."

I hope this letter answers your question on the retroactivity of the 1991 changes to §5-108. Please let me know how I can further support your work on this issue.

Very truly yours,

cc: Chairman C. T. Wilson

Sen. Stone

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February 15, 1990

The Honorable David B. Shapiro
320 House Office Building
Annapolis, Maryland 21401-1990

Dear Delegate Shapiro:

You have asked for advice as to whether a change in Courts and Judicial Proceedings Article, §5-108, "Injury to person or property occurring after completion of improvement to realty" may be given retroactive effect. 1/ It is my view that it may.

Section 5-108

Section 5-108 was originally passed in 1970 after similar bills failed in 1967, 1968 and 1969. 2/ The legislative history 3/ reveals that the bill was enacted in response to

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1 It is my understanding that the desire is to have the change apply in pending cases, and this advice is given with that understanding. It should be understood that the provision may not be applied to alter judgments that have become final. Maryland Port Admin. v. I.T.O. Corp., 40 Md.App. 697, 722, n. 22 (1978).

2 Senate Bill 240 of 1967 passed the Senate after the limit was amended from six to nine years, but was killed in committee in the House. The 1968 and 1969 bills (Senate Bills 68, 88 and 601 and House Bill 858 of 1968 and Senate Bill 162 of 1969) all died in committee in the originating houses. Senate Bill 241 of 1970 initially failed in the House, but was revived, amended to change the limit from nine to 20 years, and passed.

3 While legislative history from this era is not usually available, the file from the summer study of Senate Bill 162 of 1969 has survived and is available from Legislative Reference.

increasing suits against design professionals and contractors arising from judicial abolition of privity requirements and the adoption of the discovery rule for purposes of applying statutes of limitation. Whiting-Turner Contracting Co. v. Coupard, 304 Md. 340 (1985). Testimony by the Building Congress of Exchange, the Maryland Council of Architects, and the Consulting Engineers Council of Maryland expressed concern that, with the new changes in the law design professionals, builders and contractors were faced with the possibility that suit could be filed against them at any time in their life, and even against their estate after their death, even though they had no control over maintenance, repair, or remodeling of the building since it was completed. They noted that the passage of time raised problems of lost evidence and faded memories, and that even where defenses were successful, they were expensive. Thus, those testifying sought to be relieved of the necessity of defending suits after the passage of a set period of time.

The 1970 bill was codified at Article 57, §20, and provided:

> No action to recover damages for injury to property real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages incurred as a result of said injury or death, shall be brought more than twenty years after the said improvement was substantially completed. This limitation shall not apply to any action brought against the person who, at the time the injury was sustained, was in actual possession and control as owner, tenant, or otherwise of the said improvement. For purposes of this section, "subtantially completed" shall mean when the entire improvement is first available for its intended use.

In 1973 the section was recodified as Courts and Judicial Proceedings Article, §5-108, which read:

> (a) Except as provided by this section, no cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.
>
> (b) This section does not apply if the defendant was in actual possession and control of the property as owner, tenant, or otherwise when the injury occurred.
>
> (c) A cause of action for an injury described in this section accrues when the injury or damage occurs.

Code Revision explained the change as follows:

> This section is new language derived from Article 57, §20. It is believed that this is an attempt to relieve builders, contractors, landlords, and realtors of the risk of latent defects in design, construction, or

> maintenance of an improvement to realty manifesting themselves more than 20 years after the improvement is put in use./ The section is drafted in the form of a statute of limitation, but, in reality, it grants immunity from suit in certain instances. Literally construed, it would compel a plaintiff injured on the 364th day of the 19th year after completion to file his suit within one day after the injury occurred, a perverse result to say the least, which possibly violates equal protection. Alternatively, the section might allow wrongful death suits to be commenced 18 years after they would be barred by the regular statute of limitations.
>
> The section if conceived of as a grant of immunity, avoids these anomalies. The normal statute of limitations will apply if an actionable injury occurs. [4/]
>
> Subsection (c) is drafted so as to avoid affecting the period within which a wrongful death action may be brought.

Subsequent changes shortened the limit to ten years for architects and engineers (Chapter 698 of 1979) and for contractors (Chapter 605 of 1980).

The proposed legislation would provide that the section would not apply to a defendant who is a manufacturer or supplier of materials that are part of the improvement to real property. The legislation is being proposed in response to a series of court cases that have held that the section applies to bar suits against manufacturers of construction materials containing asbestos where those materials were installed over 20 years ago. See, First United Methodist Church v. U.S. Gypsum Co., 882 F.2d 862 (4th Cir. 1989); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89); State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civil Action No. 1108600 (Thieme, J. 6/9/89); Mayor and City Counci of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89).

Federal Due Process

The federal cases on retroactivity leave no doubt that retroactivity of the proposed legislation would not violate the federal Due Process Clause. The case that established the modern federal approach to retroactivity is Usery v. Turner Elkhorn

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4 It is my view that this would be the law in any event. For example, in Comptroller of Virginia v. King, 232 S.E.2d 895 (Va. 1977), it was held that Virginia's statute of limitations involving injuries from improvements to real property simply set an arbitrary outside limit on the initiation of lawsuits, and did not extend existing limits, such as the two-year limit for personal injury action. In addition, Code Revision's attempt to cure this problem was unsuccessful, as the Legislature found it necessary to amend the section in 1979 to clarify that an action must be filed within three years of accrual.

Mining Co., 428 U.S. 1 (1976), which involved federal legislation establishing a system for compensation for coal miners disabled by black lung disease. Mine operators argued that the statute was unconstitutional because it imposed liability on them for disabilities suffered by miners who left their employ prior to the effective date of the Act, thus charging them "with an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." Id. at 15. The Court concluded that "legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.... This is true even though the effect of the legislation is to impose a new duty or liability based on past acts." Id. at 16. Thus, the Court held that, as with other laws not impinging on a fundamental right, the appropriate test was rational basis. Specifically, the Court stated that:

> "It is by now well-established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." Id. at 15.

The Court went on to say that:

> "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former." Id. at 16-17.

While recognizing that the mine operators may not have known of the dangers, and had possibly acted in reliance upon their lack of liablity, the Court found that the Act was a rational measure to spread the costs of employee disability to those who have profited from the fruits of their labor. Id. at 18.

Like the statute in question in the Elkhorn Turner case, the proposed legislation seeks to allocate the benefits and burdens of economic life and, therefore, is subject to rational basis scrutiny. And, even if the proposed legislation is seen as creating new liability, it must also be seen as a rational measure to allocate the costs of personal injury from exposure to asbestos and for removal of asbestos to those who profited from its sale, and who were the most likely to have known of the dangers. 5/ Precisely that conclusion was reached in Wesley

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5 The dangers of asbestos exposure have been known since at least the turn of the century. See, District of Columbia v. Owens-Corning Fiberglass Corp., 1989 WL 99482 (D.C.App. 1989). Purchasers and employees, however, were unlikely to know asbestos was contained in the building materials.

Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989) (cert. pending #89-777), which upheld the retroactivity of a similar change to the D. C. statute governing claims arising from improvements to real property. 6/ In that case the Court specifically noted the absence of reliance, as the limitation did not exist at the time the materials were supplied, but was enacted afterwards. The Court also found that it made no difference for purposes of constitutional analysis that the asbestos liability was not created, as in Turner Elkhorn, but revived.

It is worthy of note that, as was the case in the Wesley Theological Seminary case, the statute in Maryland was not effective until July 1, 1970. Thus, no case that currently is held to be barred involves a manufacturer or supplier who could have relied on the bar at the time the materials were supplied.

There is an aditional factor minimizing the importance of reliance for purposes of due process analysis. That is that until the recent decisions of the lower courtrs in the asbestos cases, it was not generally understood that manufacturers and suppliers were covered by §5-108. 7/ It is undisputed that §5-108 was enacted in response to cases expanding the exposure of design professionals and contractors to liability. The legislative record reflects testimony concerning the problems faced by architects, professional engineers, contractors and builders and is free from any similar discussions with respect to manufacturers and suppliers. 8/ In fact, the Legislature has declined to give similar protecton to products liability defendants. 9/ The Revisor's Note from 1973 states that the section applies to builders, contractors, landlords and realtors. And no reported case has applied the section to a manufacturer or supplier. 10/ Thus, the action of the

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6 The D. C. statute is similar to Maryland's, a point frequently noted by the courts construing them. See, President and Directors, Etc. v. Madden, 505 F.Supp. 557 (D.Md. 1980) aff'd 660 F.2d 91 (4th Cir. 1981); In re Personal Injury Asbestos Cases, Circuit Court for Baltimore City (Levin, J. 11/1/89).

7 In fact, that issue is still not settled, as it has not yet been considered by a State appellate court, and lower courts' interpretations of law enjoy no presumption of correctness on review. Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

8 The sole mention of manufacturers is a passing in the testimony of an opponent, Wallace Dann, see Judiciary Committee Minutes, June 24, 1969, p. 3.

9 See Senate Bill 988 of 1977.

10 Whiting-Turner Contracting Co. v. Coupard, 304 Md. 304 (1985), has been cited as evidence that the section appies to suppliers of building materials and equipment. That question was not an issue in the case, however, and the passing reference to suppliers no more settles the issue of their inclusion than the omission of any mention of suppliers in (continued)

Legislature in making the change retroactive could be seen as simply restoring the law to the state the parties most likely believed existed. 11/ Numerous cases have upheld retroactive changes in the law under similar circumstances.

In Seese v. Bethlehem Steel Co., 168 F.2d 58 (4th Cir. 1949), the Court upheld application of the Portal-to-Portal Act, which provides that an employer need not pay an employee for time spent dressing and walking to the worksite unless such pay was provided by contract or was paid as a matter of custom and practice, to pending cases filed after a recent Supreme Court case had held that the Fair Labor Standards Act required such pay in all instances. In the words of the Court:

> "[A]ll that congress has done by the legislation here under consideration is to validate the contracts and agreements between employers and employees which were invalid under the Fair Labor Standards Act by reason of the interpretation placed by the Supreme Court upon that Act." Id. at 64.

Similarly, in Rhinebarger v. Orr, 657 F.Supp. 1113 (S.D.Ind. 1987), aff'd 839 F.2d 387 (7th Cir.), cert. denied, 109 S.Ct. 71 (1988), the Court upheld a retroactive Act designed to delay the applicability of the Fair Labor Standards Act to the states following the Supreme Court decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and held that the Act applied to cases filed after Garcia, but prior to the effective date of the Act.

And, in Sanelli v Glenview State Bank, 483 N.E.2d 226 (Ill. 1985), the Court upheld retroactive application of a statute that specifically permitted a long-accepted practice that a recent case had found to be a violation of fiduciary duty. The Court held that the:

Poffenberger v. Risser, 290 Md. 631, 634, n. 2 (1981) mandates the conclusion that they are excluded.

11 Even if the section were intended to include manufacturers and suppliers in general, it seems unlikely that the General Assembly intended "injury ... resulting from the defective and unsafe condition of an improvement to real property" to include injuries from such materials as asbestos, which is unsafe completely apart from its role as a part of an improvement to real property. This difference can be illustrated by comparing asbestos and a defective steel beam. The steel beam is not dangerous by itself, and can be brought to the work site and left there without noticeable risk to anyone. Only when the steel beam is included in a building does it become dangerous, because it is unable, due to its defect, to bear enough weight to perform its expected role in the improvement. Acoustical tile treated with asbestos, in contrast, is dangerous in its own right. Left at the worksite, it is potentially as dangerous as when installed as a ceiling. Unlike the steel beam, however, it performs its role as a part of the improvement to real property adequately -- the beams are covered and sound is absorbed.

> "General Assembly may enact retroactive legislation which changes the effect of a prior decision of a reviewing court with respect to cases which have not been finally decided."

Clearly then, retroactive application of the proposed change to §5-108 would not violate federal due process.

State Due Process

The State Due Process Clause, Declaration of Rights, Article 24, 12/ is generally interpreted as in pari materia with the federal provision. Northampton Corp. v. Washington Suburban Sanitary Com., 278 Md. 677 (1976). In the area of retroactive legislation, however, the Court of Appeals has not yet adopted the modern federal rule as reflected by Turner Elkhorn and Pension Benefit Guaranty Corp. v. R. A. Gray & Co., 467 U.S. 717 (1984) (unanimous), but has adhered to the older rule which looks to whether the proposed retroactivity would infringe upon "vested rights". Thus, the Court has said that "[a] statute, even if the Legislature so intended, will not be applied retrospectively to divest or adversely affect vested rights." Vytar Associates v. City of Annapolis, 301 Md. 558, 572, n. 6 (1989). Although it has been applied in other contexts, this concept has largely been used to invalidate the retroactive imposition of taxes and fees. See, Vytar, supra; Washington National Arena v. Prince George's County, 287 Md. 38, cert. denied 449 U.S. 834 (1980); National Can Corp. v. State Tax Com'n, 220 Md. 418 (1959); Comptroller v. Glenn L. Martin Co., 216 Md. 235, cert. denied 358 U.S. 820 (1958).

The term "vested right" has been recognized to be conclusory -- "a right is vested when it has been so far perfected that it cannot be taken away by statute." Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harvard Law Review 692, 696 (1960); Sanelli v. Glenview State Bank, 483 N.E.2d 226 (Ill. 1985). Factors that have been suggested in determining whether a right has vested include:

> "the nature and strength of the public interest served by the statute, the extent to which the statute modifies or abrogates the asserted preenactment right, and the nature of the right which the statute alters." Hochman, 73 Harv.L.Rev. at 697.

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12 Article 24 provides:

> "That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

In this situation the public interest is strong. The public clearly has an interest in providing remedies for those injured by toxic and carcinogenic materials with long latency periods, and in imposing that liability on the parties best able to learn of the danger and prevent it. The State also has an interest in helping owners of buildings that contain asbestos obtain funds for its removal so that no further injury occurs. In addition, the State has an interest in obtaining funds to remove asbestos from its own buildings so as to remove a threat to the health of those citizens that use the buildings. District of Columbia v. Owens-Corning Fiberglass Corp., 1989 W.L. 99482 (D.C.App. 1989). It is also clear that the "right" asserted, freedom from suit, would be completely abrogated. It is my view, however, that the public interest outweighs any disadvantage to the defendant, especially when the nature of the right asserted is taken into account.

One factor that weighs against a finding that a right is vested is a finding that the right rests on "insubstantial equities". Hochman, 73 Harv.L.Rev. at 720. One class of such cases are those extending statutes of limitations, as "no man promises to pay money with any view to being released from that obligation by lapse of time." Campbell v. Holt, 115 U.S. 620, 628 (1885). Another is whether the Act is curative, Hochman, 73 Harv.L.Rev. at 721. Both factors weigh against finding a vested right in this situation. Thus, balancing these factors, it would appear that no vested right should be found. This is in accord with the general rule in Maryland that changes in statutes of limitation may be made retroactive, Allen v. Dovell, 193 Md. 359 (1949), as well as the rule that "there can be no vested right to violate a moral duty, or to resist the performance of a moral obligation," Grinder v. Nelson, 9 Gill 299 (1850). This has long been the federal rule. In Campbell v. Holt, 115 U.S. 620 (1885), the Supreme Court upheld a statute reviving causes of action on which statutes of limitation had run. After differentiating the limit involved from one, such as adverse possession, that would vest title to real property, the Court held as follows:

> "The implied obligation of defendant's intestate to pay his child for the use of her property remains. It was a valid contract, implied by the law before the statute began to run in 1866. Its nature and character were not changed by the lapse of two years, though the statute made that a valid defense to a suit on it. But this defense, a purely arbitrary creation of the law, fell with the repeal of the law on which it depended.
>
> "It is much insisted that this right to a defense is a vested right, and a right of property which is protected by the provisions of the fourteenth amendment. It is to be observed that the words 'vested right' are nowhere used in the constitution, neither in the original instrument nor in any of the amendments to it.... We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right so as to be beyond legislative power in a proper case." Id. at 627-628.

It has been asserted, however, that the decision in Smith v. Westinghouse Electric, 266 Md. 52 (1972), compels the conclusion that §5-108 creates vested rights. That case involved a change in the statute of limitations applicable to actions for wrongful death. The Court noted that the wrongful death act created a new cause of action for something the deceased person never had -- the right to sue for injuries. It then held that where a cause of action and its limitation are created together, the timeliness of the action is a condition precedent to the right to maintain the action. See also, Chandlee v. Shockley, 219 Md. 493 (1959). In that situation, the Court held that the extension of the limit could not be made retroactive.

No Court of Appeals case has extended the rationale of Smith beyond the specific situation where the cause of action and its limitation are created by the same act, or by a later act specifically directed at the newly created cause of action. The case upon which Smith relied, William Danzer & Co. v. Gulf of S.I.R. Co., 268 U.S. 633 (1925), has been similarly limited. In Chase Securities Corporation v. Donaldson, 325 U.S. 304 (1945), the Court stated that Danzer "held that where a statute in creating a liability also put a period to its existence, a retroactive extension of the period after its expiration amounted to a taking without due process of law." And, in Radio Position Finding Corporation v. Bendix Corporation, 205 F.Supp. 850 (D.Minn. 1962), affirmed 371 U.S. 577 (1963) (per curiam), the Court differentiated Danzer as a case where "[r]ight and remedy were inextricably mixed, so that the removal of the bar of limitations constitute[d] the creation of an additional remedy." 13/ Since the limitation in §5-108 was created separately from, and applies generally to, a variety of causes of action, it is clear that the Smith case does not mandate the conclusion that it creates a vested right.

Nevertheless, it has been argued that §5-108 is a substantive, rather than a procdural limitation, and that Smith compels the conclusion that no substantive limitation can be extended retroactively to revive barred causes of action. It is clear, however, that under Maryland law an interference with substantive rights is not always of constitutional magnitude, WSSC v. Riverdale Fire Co., 308 Md. 556, 569 (1987); State commisson on Human Relations v. Amecom Div., 278 Md. 120, 123 (1976). In addition, while §5-108 has been held to be

13 Even as so limited, it is not clear that Danzer is good law. See, Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C.Cir. 1989); Nachtsheim v. Wartnick, 411 N.W.2d 882 (Minn.App. 1987). While the Supreme court has not directly overruled Danzer, it has upheld retroactive extension of a limitations period that was created simultaneously with the cause of action. International Union of Elec, Radio & Machine Wkrs v. Robbins & Meyers, 429 U.S. 229 (1976) (Title VII).

substantive for purposes of determining whether the limit runs against the State, State of Maryland v. Keene Corp., Circuit Court for Anne Arundel County, Civ. Action §1108600 (Thieme, J., 6/9/89); Mayor and City Council of Baltimore v. Keene Corp., Circuit Court for Baltimore City, Case No. 84268068/CL25639 (Davis, J. 6/2/89), 14/ determining whether it is tolled by fraud, First United Methodist Church of Hyattsville v. U.S. Gypsum, ___ F.Supp. ___ (D.Md. 1988), affirmed 882 F.2d 862 (4th Cir. 1989) (cert. pending 89-728) and for choice of law purposes, President & Directors v. Madden, 505 F.Supp. 557 (D.Md. 1980), affirmed 660 F.2d 91 (4th Cir. 1981), it seems clear that the statute does not give rise to the type of right deemed vested in Smith.

At least one court has held that statutes like §5-108 are not substantive. In Bellevue School District 405 v. Brazier Const., 691 P.2d 178 (Wash. 1984), it was held that:

> "The builder limitation statute ... creates no new right, but merely defines a limitation period within which a claim ordinarily must accrue. Even without this statute, a common law right would still exist."

The Court went on to note that, despite the fact that the limit ran from a different time than a typical statute of limitations, the policy is the same: to prevent stale claims and to place a reasonable time limit on exposure. This similarity of purpose militates against finding that §5-108 would create vested rights while a more typical statute of limitations would not. However, it has been argued that because §5-108 can bar a cause of action, while most statutes of limitation simply bar a remedy, §5-108 does create vested rights. That distinction, however, has been described as "somewhat metaphysical", Wesley Theological Seminary v. U.S. Gypsum Co., 876 F.2d 119 (D.C. Cir. 1989) (cert. pending §89-777); see also, School Board of the City of Norfolk v. U.S. Gypsum Co., 360 S.E.2d 325 (Va. 1987) (dissent), and clearly is not one that should determine the issue. 15/

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14 There are reasons to question the correctness of the assumption of these courts that the limit runs against the State if it is substantive. Adverse possession, §5-103, vests title in real property, and thus clearly creates vested rights, yet it does not run against the State. Central Collection Unit v. Atlantic Container Line, 277 Md. 626 (1976). And the District of Columbia statute has been held not to run against the government. District of Columbia v. Owens-Corning Fiberglass Corporation, 1989 WL 99482 (D.C.App. 1989).

15 This is especially true since prior to the 1983 Code Revision, the section clearly only barred the remedy, not the right. The change in language that occurred in the course of Code Revision was designed to address certain interpretive problems arguably raised by the interaction of the section and other statutes of limitation. See, infra. There is no indication that the purposes or policies behind the section had changed, or that the General Assembly felt that it was necessary to create new rights for defendants. In the absence of such evidence, it should not be assumed that such a change was intended. (continued)

In conclusion, it is my view that §5-108, whether it is conceived as barring accrual of any common law or statutory action that may arise from a defect in an improvement to real property, or simply barring a remedy, does not become such an intrinsic part of those causes of action as to create a vested right in the defendant. In the absence of such a vested right, the proposed change may be made retroactive.

I hope that this is responsive to your inquiry.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR:maa

Geisz v. Greater Baltimore Medical, 313 Md. 301, 322 (1988); Rohrbaugh v. Estate of Stern, 305 Md. 443 (1986).

Maryland Testimony SB686 2.23.23.pdf
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TO: The Honorable Members of the House Judiciary Committee

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Professor, University of Pennsylvania, and Kathryn Robb, Executive Director, CHILD USAdvocacy

RE: Testimony in Support of SB686: The Child Victims Act of 2023

DATE: February 23, 2023

Dear Honorable Members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAdvocacy, to submit testimony in support of HB1 a.k.a. The Child Victims Act of 2023, which will allow certain child sexual abuse claims to be filed at any time including those which were previously barred by any statute of limitation (SOL) or repose, claim presentation deadline, or any other limitation under the law, thereby significantly increasing access to justice for victims of these heinous crimes.

By way of introduction, Professor Marci Hamilton is a First Amendment constitutional scholar at the University of Pennsylvania who has led the national movement to reform statutes of limitations to reflect the science of delayed disclosure of childhood sexual abuse and who founded CHILD USA, a national nonprofit think tank devoted to ending child abuse and neglect. Kathryn Robb is the Executive Director of CHILD USAdvocacy, an advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. Kathryn is also an outspoken survivor of child sex abuse.

First, we want to thank the Committee Members, for taking up HB1. This legislation is vital to the safety of the children of Maryland and to upholding basic principles of fairness and justice. It is a constitutionally sound policy shift that is consistent with national trend in reviving civil claims for child sexual abuse.

I. REVIVAL OF TIME-BARRED CIVIL CLAIMS TO PROVIDE JUSTICE FOR VICTIMS OF CHILD SEXUAL ABUSE IS CONSTITUTIONAL IN MARYLAND

There is no provision in the Maryland State Constitution that prohibits the retroactive application of a revival window for perpetrators and enablers of child sexual abuse who have no vested interest in a limitations defense. Even if we assume, *arguendo*, that there is a substantive right that attaches to an SOL, the state's compelling interests in public safety and children protection outweigh any due process concerns of defendants.

A. Revival of a Civil SOL Is Constitutional Because Its Effect Does Not Impair Vested Rights

The revival of a statute of limitation is constitutional in Maryland. When judging the validity of a retroactive statute, Maryland courts ask "whether retroactive effect would impair vested rights." Allstate Ins. Co. v. Kim, 376 Md. 276, 293 (2003). Retroactive effect of a civil revival statute, providing justice for victims of child sex abuse would not impair any vested rights.[1]

To determine whether a right vests, courts will assess whether "it is actually assertible as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust." Allstate, 376 Md. at 297. A vested right "**must be something more than a mere expectation based upon an anticipated continuance of the existing law**; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another." Id. at 298 (emphasis added).

In Doe v. Roe, the court considered an extension of the civil SOL for a claim of child sexual abuse, ultimately determining that the extension was a procedural and remedial statute, and thus could be given retrospective application. 419 Md. 687 (2011). The Doe court explained that the extension of the child sex abuse SOL "did not infringe any vested or substantial right of [the] Defendant." 419 Md. at 687 (2011). The court further added that there appears to be "no reported case in Maryland that would mandate the unconstitutionality of [a fully] retroactive application of [the civil SOL]" Id. at 687, 698.

Reviving the civil SOL for Maryland's victims does not violate any provision of the Maryland state constitution. There is no right to a limitations defense. It is unreasonable for those responsible for the sexual abuse of children to claim wholesale immunity from their actions by relying on the existence of a short SOL. The abuse of children has always been illegal and any policy shift increasing liability for those responsible for child sex abuse would not be considered stripping defendants of any kind of right. The retroactive application of an SOL merely serves, in these cases, as a practical and pragmatic device to aid the courts in the search for justice. Not only does the revival of the expired procedural SOLs not interfere with any vested rights, it will also provide much-needed closure to these victims who have been shut out of court due to an arbitrary procedural deadline.

B. Even If a Court Were to Find That There Is a Substantive Right Attached to an SOL, that Right Is Outweighed by the State's Compelling Interest in Identifying Hidden Child Predators and Protecting Maryland's Children

The state's compelling interest in protecting Maryland's children outweighs any potential due process claim in an SOL defense. It is long-established that states have a compelling interest in the protection of children. See, e.g., Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982) (It is clear that a state's interest "safeguarding the physical and psychological well-being of a minor" is "compelling."); New York v. Ferber, 458 U.S. 747, 756–57 (1982) ("*First.* It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling."); Ashcroft v. Free Speech Coal., 535 U.S. 234, 263 (2002) (O'Connor, J., concurring) ("The Court has long recognized that the Government has a compelling interest in protecting our Nation's children.").

Maryland follows the Supreme Court in finding a compelling or significant interest in protecting children. See, e.g., In re S.K., 237 Md. App. 458, 469–70, cert. granted, 461 Md. 483 (2018) (explaining that the Supreme Court, Court of Appeals of Maryland, and the Court of Special Appeals of Maryland have all recognized the state interest in child protection); Outmezguine v. State, 335 Md. 20, 37 (1994) ("The State unquestionably has a significant interest in protecting children."). "There is also no doubt that[] '[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.'" Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft, 535 U.S. at 244). It is also established that "a legislature may pass valid laws to protect children and other victims of sexual assault from abuse. See id., at 245; accord, New York v. Ferber, 458 U.S. 747, 757 (1982)." Packingham, 137 S. Ct. at 1736 (internal citations omitted). The compelling interest in protecting Maryland's children from sexual abuse justifies the legislative enactment of a narrowly tailored time-limited civil revival window.

II. LANGUAGE, LEGISLATIVE INTENT, AND HISTORY SUPPORT THAT § 5-117(D) IS A STATUTE OF LIMITATIONS, NOT A STATUTE OF REPOSE, THAT MAY BE RETROACTIVELY REPEALED WITHOUT CONSTITUTIONAL CONCERN

Statutes of limitation and statutes of repose (SORs) are different in both their purpose and legal effect. A "statute of limitation" is a procedural device which sets a date by which a claim must be filed based on when the injured party knew or should have known of the harm and who caused it. See, Anderson v. U.S., 427 Md. 99, 117 (Md.,2012) (quoting Black's Law Dictionary). A "statute of repose," which can be substantive or procedural, sets a date by which a claim must be filed regardless of whether the injured party is aware of the injury and who caused it or whether the injury has even occurred. Id. Thus, "a critical distinction" between a statute of limitation and a statute of repose is that "a repose period is fixed" such that its expiration "will not be delayed by estoppel or tolling." See 4 C. Wright & A. Miller, Federal Practice and Procedure § 1056, p. 240 (3d ed. 2002) Restatement (Second) of Torts § 899, Comment *g* (1977).

Maryland courts look holistically to determine if a statute is one of limitation or one of repose and will consider: (1) what triggers the running of the period; (2) whether the statute eliminates claims that have not yet accrued; (3) the purpose behind the statute; and (4) the legislative history surrounding the statutes' passage. Anderson v. United States, 427 Md. 99 (2012); See also, Wood v. Valliant, 231 Md.App. 686, 701 (Md.App., 2017). The relevant inquiry proves that § 5-117(d) is a statute of limitation and not a statute of repose and thus it may be retroactively repealed by the legislature without effect to any substantive right of defendants.

A. The Plain Language of § 5-117(d) Is Consistent with A Statute of Limitations and Not a Statute of Repose

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [L]egislature." SVF Riva Annapolis LLC v. Gilroy, 459 Md. 632, 639–40 (Md., 2018) (quoting Blake v. State, 395 Md. 213, 224 (2006) (quotations omitted)). "When the language of a statute is plain and clear and expresses a meaning consistent with the statute's apparent purpose, no further analysis of legislative intent is ordinarily required." Rose v. Fox Pool Corp., 335 Md. 351, 359 (Md. 1994).

The statute at issue, Md. C.J.P. § 5-117 titled "Sexual abuse of minor", provides:

> (d) In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The plain language of Section 5-117(d) indicates that an action cannot be filed for damages against a non-perpetrator person or governmental more than 20 years after the victim reaches majority, which is age 38. Under Maryland law, Section 5-117(d) cannot be construed to be a statute of because it does not limit the "time in which an action may accrue should an injury occur in the future." Anderson, 427 Md. at 119. The statute acknowledges that the injury has already occurred. Id. Because a cause of action for sexual abuse of a minor accrues on the date of the wrong, the triggering event for the start of § 5-117(d)'s limitation period is the date of injury and not an unrelated event. Further, the limitations period under section 5-117(d) may be delayed until a victim reaches the age of majority and tolling theories do not apply to true statutes of repose. Section 5-117(d) imposes a *limitation* on the period of time that a cause of action for damages may be asserted. It is clear that this statute is a statute of limitation.

B. **The Legislature Never Intended § 5-117(d) to be a Statute of Repose**

"When the language of the statute is subject to more than one interpretation, it is ambiguous and we usually look beyond the statutory language to the statute's legislative history, prior case law, the statutory purpose, and the statutory structure as aids in ascertaining the Legislature's intent." Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 315 (Md.,2010). Where the legislative intent is not clear from the plain meaning of the statute, the Court of Appeals instructed,

> [O]ur endeavor is always to seek out the legislative purpose, the general aim or policy, the ends to be accomplished, the evils to be redressed by a particular enactment. In the conduct of that enterprise, we are not limited to study of the statutory language. The plain meaning rule "'is not a complete, all-sufficient rule for ascertaining a legislative intention . . .'" The "meaning of the plainest language" is controlled by the context in which it appears. Thus, we are always free to look at the context within which the statutory language appears. Even when the words of a statute carry a definite meaning, we are not "precluded from consulting legislative history as part of the process of determining the legislative purpose or goal" of the law.

Rose v. Fox Pool Corp., 335 Md. 351, 359 (Md.,1994) (quoting Morris v. Prince George's County, 319 Md. 597, 573, 603-4 (1990).

The legislative history of the 2017 bill amending § 5-117(d) shows that the General Assembly never intended to create a vested right in institutions and other entities that sheltered perpetrators of child sexual abuse. The legislative records for the original bills, HB 642/SB 505, reveal that the language of § 5-117(d) was not even included, indeed there was no mention of an SOR whatsoever. See Maryland Senate Bill No. 505, Maryland 437th Session of the General Assembly, 2017; Maryland Senate Bill No. 505, Maryland 437th Session of the General Assembly, 2017 ("SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act."). The SOR language was added later, behind closed doors without the opportunity for feedback in committee, sub-committee, or floor and without the knowledge of the original sponsors of the bill. Indeed, upon introduction of the amendment with the repose statute, members of the Judiciary Committee decried any suggestion that the legislature intended to grant permanent immunity to individuals and institutions responsible for child sexual abuse. See *When Maryland Gave Abuse Victims More Time to Sue, it May Have Also Protected Institutions, Including the Catholic Church*, WASH POST (Mar. 31, 2019). To the contrary, the General Assembly intended to provide access to justice for victims of child sexual abuse by enabling them to bring claims against any culpable party.

C. Construing § 5-117(d) as a Statute of Repose Is Inconsistent with the History of SORs in Maryland

In Maryland, as in many other jurisdictions, statutes of repose were enacted primarily to protect builders, contractors, architects, engineers, and developers from indefinite liability for "property damage and personal injury caused by their work," which lawmakers feared would deter such professionals from experimenting with, and thus improving upon, their designs and procedures. Carven v. Hickman, 135 Md.App. 645, 652-653 (Md.App. 2000), certiorari granted 363 Md. 661, affirmed 366 Md. 362; See also SVF Riva Annapolis LLC v. Gilroy, 459 Md. 632, 648–49 (Md. 2018) (explaining that statutes of repose "are a response to the problems arising from the expansion of liability based on the defective and unsafe condition of an improvement to real property.") (Citing Whiting–Turner Contracting Co. v. Coupard, 304 Md. 340, 349, 499 A.2d 178 (1985)). Thus, the General Assembly uses SORs to help ensure stability in the marketplace which is in the "economic best interests of the public." SVF Riva Annapolis v. Gilroy, 459 Md. 632 (2018).

Maryland has only one statute of repose, Md. Code CJP § 5-108, which deals with professional liability for defective improvements to real property. Improvements to real property are economic drivers and the protection of the SOR reflects the public interest in a strong economy. Indeed, courts have not readily construed other statutes to be statutes of repose. For example, Maryland Courts previously considered whether the statute governing limitations for medical malpractice claims, § 5–109, is a statute of repose, but ultimately concluded that it is a statute of limitations. Anderson v. U.S., 46 A.3d 426, 442, 427 Md. 99, 125 (Md.,2012). The Court explained that had the General Assembly wanted it to be a statute of repose, it "was free to choose a different statutory scheme, one that did not run the limitations period from an injury or toll the period for minority or otherwise, but it chose not to do so. It chose, instead, to adopt a statute of limitations." Id. at 126.

It hardly makes sense then that such a protection would exist in the context of child sexual abuse claims even when no such protection exists for medical malpractice claims or lesser tort. While there are no cases citing Section 5-117(d) after it had been amended in 2017, in general, previous court decisions have referred to § 5-117 as a statute of limitation, and not a statute of repose. See e.g., Scarborough v. Altstatt, 228 Md. App. 560, 576 (2016) (generally referring to Section 5-117 as a statute of limitation). Indeed, the General Assembly never intended to create a vested right in perpetrators and entities that sheltered child sexual abusers. Such protections would serve no public benefit. Conversely, repealing the so-called statute of repose added to §5-117 in 2017 will give victims with revived claims access to justice long overdue in Maryland.

D. Even if § 5-117(d) Is Determined to be an SOR, the State's Compelling Interest in Child Protection Outweighs Any Substantive Right to Repose

If Maryland determines that § 5-117(d) is a statute of repose, victims of child sex abuse will potentially be kept out of court by defendants who argue that they have a substantive, vested right in the expired claims. The state's compelling interest in protecting Maryland's children outweighs any potential due process claim in the so-called statute of repose. As explained in Section I (c), the compelling interest in protecting Maryland's children from sexual abuse justifies the enactment of a time-limited civil revival window which retroactively repeals the so-called repose language in § 5-117(d). By deleting the statute of repose for child sex abuse and clarifying that a time-barred revival window for child sex abuse is allowed under the Maryland Constitution, the Maryland legislature will finally empower victims of child sex abuse to hold their perpetrators and any culpable actors in their abuse accountable.

III. AMENDING MARYLAND'S STATUTES OF LIMITATIONS FOR CHILD SEXUAL ABUSE TO INCLUDE A REVIVAL WINDOW IS BOTH CONSTITUTIONAL CONSISTENT WITH THE NATIONAL TREND TO GIVE SURVIVORS ACCESS TO JUSTICE

There is a nationwide movement to provide access to justice for victims who were unfairly blocked from bringing their claims due to too short SOLs. Since 2002, 27 jurisdictions have enacted laws that revive civil suits for victims of child sexual abuse whose SOL has already expired.[2] Of those 27 jurisdictions, 24 of them have held that a retroactive procedural change in law, like revival of a civil SOL, is constitutional: Arizona, California*, Connecticut*, Delaware*, Georgia*, Hawaii*, Idaho, Iowa, Kansas, Massachusetts*, Michigan, Minnesota*, Montana*, New Jersey, New Mexico, New York*, North Dakota, Oregon, Pennsylvania, South Dakota, Washington, Washington D.C.*[3], West Virginia, Wyoming. An asterisk indicates that the state has revived expired civil SOLs for child sex abuse. The trend in recent cases is to find window legislation constitutional.[4]

By far the most popular means of revival in the states has been a "window." California became the first state to enact revival legislation to help past victims of abuse with its 1-year revival window in 2003. Since then, 18 more states—Delaware, Hawaii, Minnesota, Georgia, Utah, Michigan, New York, Montana, New Jersey, Arizona, Vermont, North Carolina, Kentucky, Arkansas, Nevada, Louisiana, Maine, Colorado*—Washington D.C., Northern Mariana Islands, and Guam have opened windows.

Similarly, there is a nationwide movement away from statutes of repose and toward expanding victim rights. Although West Virginia also has a statute of repose, South Dakota and Maryland are the only two states that have further limited rights of victims to file child sex abuse claims since 2002. Every other state has either expanded civil statutes of limitations for child sex abuse, or exempted child sex abuse from statutes of repose. Almost every state recognizes the important

distinctions between child sex abuse and construction and design industries, by either exempting child sex abuse from statutes of repose, or abolishing statutes of repose altogether. For example, in 1976, Kansas enacted an 8-year statute of repose on claims other than for those related to real property. K.S.A. 60-515(a). However, in 1992, the Kansas legislature enacted an exception to that statute of repose, by passing a statute specifically addressing child sex abuse claims. K.S.A. 60-523. Now, child abuse victims in Kansas have three years after discovering the connection between the abuse and their injuries to bring a claim, regardless of a statute of repose which acts as a complete shield to liability for other claims. Likewise, in 1991, Illinois enacted a statute of repose for child sex abuse claims, limiting them to before a victim's 30th birthday. 735 ILL. COMP. STAT. 5/13-202.2 (1991). Only three years later, the Illinois legislature removed the statute of repose, and in 2014, it eliminated the statute of limitations entirely. 735 ILL. COMP. STAT. 5/13-202.2. Similarly, in 1991, Virginia enacted a child sex abuse statute including a ten-year statute of repose. Less than four years later, the legislature removed the statute of repose, leaving a discovery rule intact. VA. CODE ANN. § 8.01-249 (1995). Prior to 2019, North Carolina had a three-year discovery rule that was limited by a statute of repose barring all claims brought ten years after the last act of sexual abuse endured by the victim. N.C. GEN. STAT. ANN. § 1-52(16) (1991). In 2019, the North Carolina legislature unanimously passed exemptions from the statute of repose for child sex abuse crimes, allowing victims to file child abuse claims until they are 28 years old, and allowing a plaintiff to file a claim against a defendant within two years of the defendant's criminal conviction for child sex abuse. N.C. GEN. STAT. ANN. § 1-52(16) (2019).

These revival windows together with repealing or exempting child sex abuse claims from statutes of repose have been instrumental in giving thousands of victims across America a long overdue opportunity for justice. They also shift the cost of the abuse from the victims to the ones who caused it. They also make states a safer place for children by educating the public about hidden predators and institutions that endanger children in their communities.

IV. RESEARCH ON TRAUMA AND ITS IMPACT ON DISCLOSURE SUPPORTS SOL REFORM FOR CHILD SEXUAL ABUSE

A. Child Sexual Abuse is a Public Policy Crisis That Causes Lifelong Damage to Victims

Currently, more than 10% of children are sexually abused, with at least one in five girls and one in thirteen boys sexually abused before they turn 18.[5] CSA is a social problem that occurs in all social groups and institutions, including familial, religious, educational, medical, and athletic. Nearly 90% of CSA perpetrators are someone the child knows; in fact, roughly one third of CSA offenses are committed by family members.[6]

The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:[7]

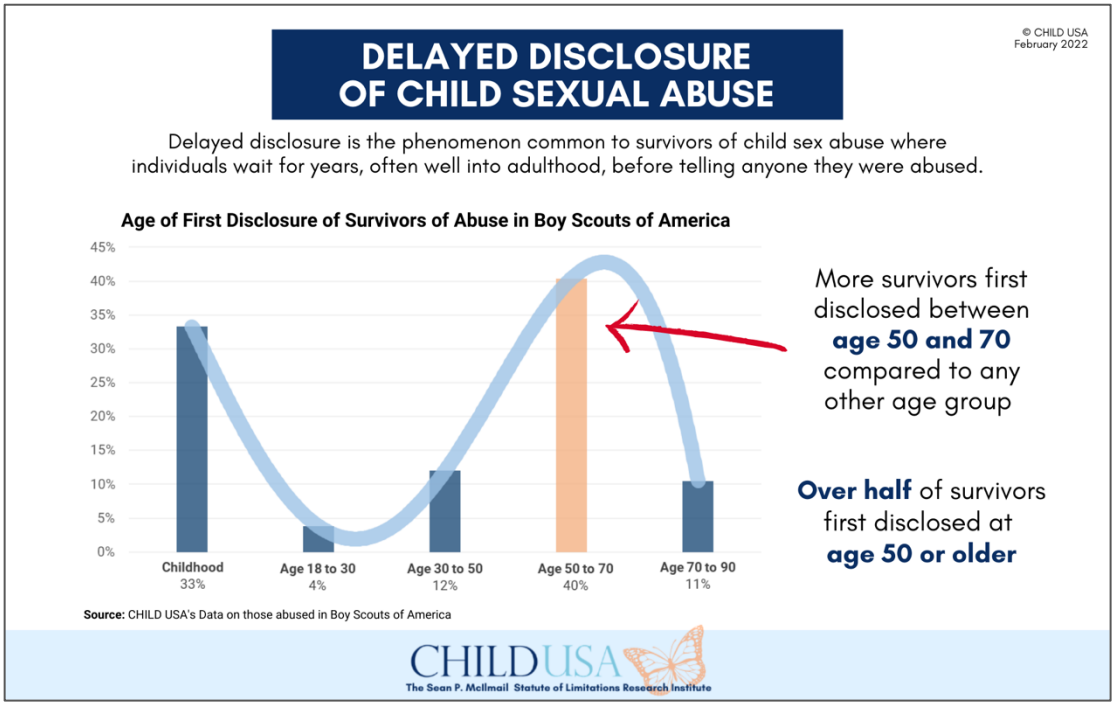
- Childhood trauma, including CSA, can have **devastating impacts on a child's brain**,[8] including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD)[9]; and disability.[10]

- CSA victims suffer an **increased risk of suicide**—in one study, female CSA survivors were two to four times more likely to attempt suicide, and male CSA survivors were four to 11 times more likely to attempt suicide.[11]

- CSA leads to an increased risk of **negative outcomes across the lifespan**, such as alcohol problems, illicit drug use, depression, marriage issues, and family problems.[12]

B. CSA Victims Commonly Delay Disclosure of Their Abuse for Decades

Many victims of CSA suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, CSA victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities.[13] Additionally, CSA survivors may struggle to disclose because of trauma and psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma surrounding victimization.[14] Further, many injuries resulting from CSA do not manifest until survivors are well into adulthood. These manifestations may coincide with difficulties in functioning and a further delay in disclosure of abuse.



Moreover, disclosure of CSA to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the survivor knowing that he or she was abused, being willing to identify publicly as an abuse survivor, and deciding to act against their abuser. In light of these barriers to disclosure, it is not surprising that:

- In a study of survivors of abuse in Boy Scouts of America, **51%** of survivors disclosed their abuse for the first time at **age 50 or older**.

- **One-third** of CSA survivors **never report** their abuse to anyone.

For both children and adults, disclosure of CSA trauma is a process and not a discrete event in which a victim comes to terms with their abuse.[15] To effectively protect children from abuse, SOL laws must reflect this reality.

V. SOL Reform Serves the Public Good by Giving Survivors Access to Justice and Preventing Future Abuse

Historically, a wall of ignorance and secrecy has been constructed around CSA, which has been reinforced by short SOLs that kept victims out of the legal system. Short SOLs for CSA play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment and leave future children vulnerable to preventable sexual assault.

CHILD USA and CHILD USAdvocacy are leading the vibrant national and global movement to eliminate civil and criminal SOLs and revive expired civil claims as a systemic solution to the preventable CSA epidemic.[16] **There are three compelling public purposes served by the child sexual abuse SOL reform movement**, which are explained in the graphic below:

A. SOL Reform Identifies Hidden Child Predators and Institutions that Endanger Children

It is in society's best interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. The decades before public disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Some predators abuse a high number of victims and continue abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the highest time between offense to conviction was 36 years.[17] SOL reform helps protect Maryland's children by identifying sexual predators in our midst. By eliminating short restrictive SOLs and reviving claims for past abuse, hidden predators are brought into the light and are prevented from further abusing more children in Maryland.

B. SOL Reform Shifts the Cost of Abuse

CSA generates staggering costs that impact the nation's health care, education, criminal justice, and welfare systems. The estimated lifetime cost to society of child sexual abuse cases occurring in the US in 2015 is $9.3 billion, and the average cost of non-fatal per female victim was estimated at $282,734. Average cost estimates per victim include, in part, $14,357 in child medical costs, $9,882 in adult medical costs, $223,581 in lost productivity, $8,333 in child welfare costs, $2,434 in costs associated with crime, and $3,760 in special education costs. Costs associated with suicide deaths are estimated at $20,387 for female victims.[18]

It is unfair for the victims, their families, and Maryland taxpayers to be the only ones who bear this burden; this bill levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers.

C. SOL Reform Prevents Further Abuse

SOL reform also educates the public about the prevalence and dangers of CSA and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse.[19] By shedding light on the problem, parents and other guardians are better able to identify abusers and responsible institutions, while the public is empowered to recognize grooming and abusive behavior and pressure youth serving organizations to implement prevention policies to report abuse in real time. Indeed, CSA publicity creates more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

VI. CONCLUSION

A Time-limited Civil SOL Revival Window for Victims of Child Sex Abuse is the only way to provide justice for the victims of abuse in Maryland and to prevent future child sex abuse. With clear legislative intent, it is constitutional to amend Maryland's statutes of limitations for child sex abuse to include a temporary civil revival window under both Maryland and Federal Law. Such legislation is consistent with the national trend to give survivors access to justice.

We commend you and this committee for taking up this legislation as it will clearly protect the children of Maryland and allow justice for so many who have suffered for far too long.

Please feel free to contact us should you have any questions.

Sincerely,

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[1] Many states hold that the revival of an SOL for otherwise time-barred claims is in no way a violation of a defendant's due process rights, because there is no vested right in an SOL defense as a matter of law. See, e.g., Chevron Chemical Co. v. Superior Court, 131 Ariz. 431, 440 (1982) (explaining that the right to raise a one year SOL defense instead of a two year defense is not a vested property right garnering Fourteenth Amendment protections, "even if the result may be increased liability on the part of the defendant."); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014) (Determining that the shelter of an SOL is a matter of remedy and not a fundamental right; the lapse of an SOL does not endow citizens with vested property rights in immunity from suit . . . "Where a lapse of time has not invested a party with title to real or personal property, a state legislature may extend a lapsed statute of limitations without violating the fourteenth amendment, regardless of whether the effect is seen as creating or reviving a barred claim.") (internal citations omitted); Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 668-69 (1992); Pryber v. Marriott Corp., 98 Mich. App. 50, 56-57, 296 N.W.2d 597 (1980), aff'd, 411 Mich. 887, 307 N.W.2d 333 (1981) (per curiam); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) (explaining that due process is not violated by the retroactive application of a revival window for a perpetrator of child sexual abuse who has no vested interest in an SOL defense); Panzino v. Continental Can Co., 71 N.J. 298, 304-305, (1976); Lane v. Dept. of Labor & Indus., 21 Wn. 2d 420, 426, 151 P.2d 440 (1944); Vigil v. Tafoya, 600 P.2d 721, 724-25 (Wyo. 1979).

[2] See CHILD USA, *2023 SOL Tracker,* available at https://childusa.org/2023sol/

[3] Neighboring Washington D.C. has already passed SOL reform legislation with a revival window in 2019; D.C. ACT 22-593 eliminates the criminal SOL, extends the civil SOL to age 40 with a 5-year discovery rule, and opens a 2-year revival window. This legislation has been approved by the mayor but must be passed by Congress.

[4] In five states, including Maryland, the matter is still an open question. Allstate Ins. Co. v. Kim, 829 A.2d 611, 622-23 (Md. 2003); Doe v. Roe, 20 A.3d 787, 797-799 (Md. 2011) (open question). Catholic Bishop of N. Alaska v. Does, 141 P.3d 719, 722-25 (Alaska 2006) (open question); Chevron Chemical Co. v. Superior Court, 641 P.2d 1275, 1284 (Ariz. 1982); City of Tucson v. Clear Channel Outdoor, Inc., 105 P.3d 1163, 1167, 1170 (Ariz. 2005) (barred by statute, Ariz. Rev. Stat. Ann. § 12-505 (Ariz. 2010)); Mudd v. McColgan, 183 P.2d 10, 13 (Cal. 1947); 20th Century Ins. Co. v. Superior Court, 109 Cal. Rptr. 2d 611, 632 (Cal. Ct. App. 2001), cert. denied, 535 U.S. 1033;(2002); Shell W. E&P, Inc. v. Dolores Cnty. Bd. of Comm'rs, 948 P.2d 1002, 1011-13 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319, 322 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Doe v. Hartford Roman Catholic Diocesan Corp., 317 Conn. at 439-40; Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258-60 (Del. 2011); Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229, 1241 (D.C. 1990); Canton Textile Mills, Inc. v. Lathem, 317 S.E.2d 189, 193 (Ga. 1984); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661, 662 (Ga. 1996); Roe v. Doe, 581 P.2d 310, 316 (Haw. 1978); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161, 1164 (Idaho 1985); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014); Metro Holding Co. v. Mitchell, 589 N.E.2d 217, 219 (Ind. 1992); Harding v. K.C. Wall Products, Inc., 831 P.2d 958, 967-968 (Kan. 1992); Ripley v. Tolbert, 921 P.2d 1210, 1219 (Kan. 1996); Sliney v. Previte, 473 Mass 283, 41 N.E.3d 732 (Mass. 2015); Rookledge v. Garwood, 65 N.W.2d 785, 790-92 (Mich. 1954); Pryber v. Marriott Corp., 296 N.W.2d 597, 600- 01 (Mich. Ct. App. 1980), aff'd, 307 N.W.2d 333 (Mich. 1981) (per curiam); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002); In re Individual 35W Bridge Litigation, 806 N.W.2d 820, 830-31 (Minn. 2011); Cosgriffe v. Cosgriffe, 864 P.2d at 778; Alsenz v. Twin Lakes Village, 843 P.2d 834, 837-838 (Nev. 1992), aff'd, 864 P.2d 285 (Nev. 1993) (open question); Panzino v. Continental Can Co., 364 A.2d 1043, 1046 (N.J. 1976); Bunton v. Abernathy, 73 P.2d 810, 811-12 (N.M. 1937); Orman v. Van Arsdell, 78 P. 48, 48(N.M. 1904); Gallewski v. Hentz & Co., 93 N.E.2d 620, 624-25 (N.Y. 1950); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1079-80 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781, 786 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415, 423 (Ohio 2010) (open question); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); Owens v. Maass, 918 P.2d 808, 813 (Or. 1996); Bible v. Dep't of Labor & Indus., 696 A.2d 1149, 1156 (Pa. 1997); McDonald v. Redevelopment Auth. of Allegheny Cnty., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), appeal denied, 968 A.2d 234 (Pa. 2009); Stratmeyer v. Stratmeyer, 567 N.W.2d at 223; Lane v. Dep't of Labor & Indus., 151 P.2d 440, 443 (Wash. 1944); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914, 922 (Wash. 2006), superseded in part by statute Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061, 1064 (Wash. 2007), overruled in part by 207 P.3d 1251 (Wash. 2009); Pankovich v. SWCC, 163 W. Va., 259 S.E.2d 127, 131-32 (W. Va. 1979); Shelby J.S. v. George L.H., 381 S.E.2d 269, 273 (W. Va. 1989); Neiman v. Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160, 164 (Wis. 2000); Society Ins. v. Labor &

Industrial Review Commission, 786 N.W.2d 385, 399-401 (Wis. 2010) (open question); Vigil v. Tafoya, 600 P.2d 721, 725 (Wyo. 1979); RM v. State, 891 P.2d 791, 792 (Wyo. 1995).

[5] G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of CSA among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of CSA among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of CSA among North American boys and girls respectively).

[6] Perpetrators often being parents, stepparents, siblings, and grandparents. Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19 (2007); David Finkelhor & Anne Shattuck, *Characteristics of Crimes Against Juveniles*, University of New Hampshire, Crimes Against Children Research Center (2012), available at http://www.unh.edu/ccrc/pdf/CV26_Revised%20Characteristics%20of%20Crimes%20against%20Juveniles_5-2-12.pdf.

[7] B. A. van der Kolk, *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress,* 1(5) HARVARD REV. OF PSYCHIATRY 253-65 (1994); *see also* Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA (2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf.

[8]As explained by the Center for Disease Control, "Adverse Childhood Experiences" ("ACEs"), like CSA, "have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity." Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245 (1998); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089 (Dec. 2001).

[9] Josie Spataro et al., *Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females*, 184 Br. J. Psychiatry 416 (2004).

[10] *See* Felitti, at 245–58; *see also* R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARACH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) ("Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders"); M. Merricka., et al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (July 2017); *see also* Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress*, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., *Concomitance between childhood sexual and physical abuse and substance use problems: A review*, 22 CLINICAL PSYCHOL. REV. 27 (2002) (adult survivors of CSA are nearly three times as likely to report substance abuse problems than their non-survivor peers).

[11] Beth E. Molnar et al., *Psychopathology, Childhood Sexual Abuse and other Childhood Adversities: Relative Links to Subsequent Suicidal Behaviour in the US*, 31 PSYCHOL. MED. 965 (2001).

[12] Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREV. MED. 430, 434 (2005).

[13] Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123 (2015).

[14] Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

[15] Often, this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually or over time as a victim recovers their memory. Hoskell, at 24.

[16] For an analysis of the SOL reform movement since 2002, *see* CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/sol-report-2020.

[17] Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995).

[18] Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

[19] *E.g.,* Netflix's *Jeffrey Epstein: Filthy Rich*; HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal.*

Episcopal Diocese of MD SB686 Testimony 2023.pdf
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THE EPISCOPAL DIOCESE OF MARYLAND

FAVORABLE

SB 686 Civil Actions - Child Sexual Abuse – Definition, Damages and Statute of Limitations (The Child Victims Act of 2023)
Senate Judicial Proceedings Committee
Episcopal Diocese of Maryland
2/23/2023

To: Senator William C. Smith, Jr., Chair, Senator Jeff Waldstreicher, Vice-Chair, and members of the Senate Judicial Proceedings Committee

FROM: Rev. Linda Boyd, Co-Chair, and Lynn Mortoro, Maryland Episcopal Public Policy Network, Maryland, Diocese of Maryland

The Episcopal Diocese of Maryland strongly supports SB 686. Someone who victimizes a child should not be able to hide behind time. SB 686 is about doing the right thing for those individuals traumatized through sexual abuse in the state of Maryland. If a person who was sexually assaulted as a child takes too long to report his or her abuse, the abuser escapes civil prosecution. The perpetrator is free to keep stalking, grooming and abusing children. We are committed to recognizing and reporting abuse and neglect as part of the Safeguarding God's Children program. This program is designed to help people recognize, report, and, perhaps most importantly, prevent abuse and neglect of our children and youth. The Diocese supports behaviors and practices that allow members, and participants in the Diocese to fully demonstrate love and compassion for children and youth in sincere and genuine relationships. We recognize that relationships are the foundation of Christian ministry, and that community is central to the life of the church. The Diocese is committed to providing safe places for children, and youth, to grow in their life in Christ.

CHILDUSA reports that "most child victims disclose (if at all) at an average age of 52 years of age, and 1 in 4 girls and 1 in 6 boys in the U.S. are sexually abused." SB686 takes an important step to protect victims' rights. The current law, as written, defends and protects predators. Abolishing the statute of limitations for sex crimes against children will not solve the problem of child sexual abuse overnight in our country, but it will arm society with the vehicle to protect our children. Society's need to identify and apprehend child sex offenders does not expire with time, and neither should a victim's access to justice.

We urge a favorable report on SB 686.

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SB 686 testimony Kurt William Rupprecht.pdf
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TESTIMONY IN SUPPORT OF SB 686

Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

SUPPORT

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

FROM: Kurt William Rupprecht

DATE: February 23, 2023

Chairman Smith and Committee, thank you for this opportunity to speak our pain and our truth.

My name is Kurt Rupprecht of Forest Hill, MD. I am a Survivor of childhood sexual abuse in support of SB686 and HB1, the Child Victims Act.

I was born in 1970 and raised in Salisbury, MD. My Dad was a Maryland State Trooper, Mom a Registered Nurse. When Dad was assigned to the Salisbury Barracks, they were people suddenly far away from their homes in east Baltimore County. The foundation of their new lives was the Catholic Church. I grew up attending Mass weekly, volunteering with the Little Sisters of the Poor, and receiving my childhood sacraments at St. Francis de Sales parish in Salisbury. I dearly wanted to make my parents proud while embracing my Catholic faith.

In 1978 a charismatic young Seminarian named Joseph McGovern came to St. Francis. He endeared himself to my family. In January 1979 he was Ordained, and as the Church teaches, he became the human form of Jesus and God on Earth with their transformational powers of the Sacraments. Father Joe soon made me his special helper to assist him after the Folk Mass. He would take me into the Sacristy for the honor to stand arms out holding his holy vestments. He would then open his pants exposing himself to me. After convincing me to keep our special secret, I was later promoted to also being hugged and pressed against his genitals, while still holding his vestments. Right now, I can still see, smell, and feel the heavy polyester on my arms; as I tried not to look at him and focus on my important Catholic duties.

The abuse continued, finally culminating in December 1979, when one Sunday afternoon Father Joe took me to McDonalds for a Star Trek the movie Happy Meal.

I was thrilled! Afterward he drove me to a secluded location, slide his left hand down my pants and began to molest me. I finally said No, begging him to stop. That feeble resistance of a skinny 9 year old boy ignited a manic violent response. He began to squeeze my genitals until it felt they would smash and burst. He clamped his right hand over my throat and choked me. Screaming into my face that I had betrayed him and God, screaming 'God wants you Dead'! Frozen, terrified, fighting for breath, I felt I was about to die. That's when my brain shut down to protect me the only way it could, and repressed those details for decades. However, that raging Monster imbedded itself into my psychosis permanently. The destructive impact of the PTSD I suffered manifested into my thoughts, emotions, and behaviors.

I have suffered devastating mental and physical damages from my abuse for 44 years. I will suffer from them the rest of my life, as will my wife and children. There is no true healing from this type of childhood trauma, only survival. Every day is a choice: to take the combination of medications I require to remain stable, to see my counselor and doctor, to go to work to provide for my family, to not make my parents bury their only child. Or the choice to give up and make it the day I end my own life, because that is the only way to finally kill the Monster that lives inside me.

Please also understand the larger picture of how I came to be abused as a child of the Diocese of Wilmington who lived in Maryland. In the Diocese of Wilmington 85% of their Parishes had Predator Priests assigned during the 1960s through 1990s. We know this because of the 2007 Delaware Statute of Limitations Reform Law and look back window for Survivors. The legal Discovery empowered by the look back window released the documentation proving the Diocese of Wilmington protected their predator priests, and their explicit strategy to avoid exposure in Delaware by concentrating their predators within the Maryland parishes. The Parishes in Delaware contained 79% of the Diocese members and averaged 2.4 predator priest assignments per Parish. Maryland contained only **21**% of the Diocese members while the Parish average was **7** predator priest assignments. Therefore, within the Wilmington Diocese, catholic children on the Eastern Shore of Maryland were 11 times more likely to be exposed to a predator priest than catholic children in Delaware.

There are 59 parishes in the Wilmington Diocese. The one by far with the highest number of predator priests' assignments was St. Francis de Sales in Salisbury. Two

of its' Pastors, Fathers Lind and Irwin, were themselves abusers and considered 'predator mentors' to younger abusive priests. Father Irwin was my abuser's mentor when Joe McGovern arrived as a seminarian. Father Joe would be transferred among five different parishes over the next six years. Sexually abusing young boys in every location. He even fought back against his own Bishops and Vicar General when they attempted to remove him from ministry. Screaming and raging at them how they did not understand the sanctity of his Man-Boy relationships.

Today Father Joe is alive and living on his Diocesan paid benefits. My parents are alive and able to corroborate the times and places of my sexual abuse. Sexual abuse which for me occurred 6 miles on the wrong side of the Mason Dixon line. It occurred in Maryland, where today even the Attorney General's Catholic Church Investigation, which I participated, is not allowed to bring to light the abuses suffered across this state. It occurred in Maryland, where my Justice delayed is truly Justice denied.

Finally, please remember The Child Victims Act is for all our citizens; Survivors of the past, as well as our Children Today and Tomorrow. I realize my experiences are with the one entity that consistently fights this legislation. However, **no** single institution of any kind deserves the power to deny Justice to those of us who are broken and Protection to our children when they are vulnerable.

Please hear us. I implore you to support SB686.

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MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 686
Lisae C. Jordan, Executive Director & Counsel
February 23, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 686.

Senate Bill 686 – Expanding the Statute of Limitations in Civil Child Sexual Abuse Cases
This bill would help provide victims of child sexual abuse with meaningful access to Maryland's civil justice system by eliminating the statute of limitations and providing a 2 year window to file currently barred cases.

Senate Bill 686 is a survivor-oriented approach to child sexual abuse for some, but not all survivors. It would allow a civil action for damages caused by child sexual abuse to be filed at any time. Maryland most recently expanded the time period for filing suit in 2017. With those revisions, perpetrators can be ordered to pay damages at any time until the victim was 38 years old or 3 years after being convicted for the sexual abuse. Institutions, governments, and person which were not the direct perpetrator (such as schools or religious entities) do not face liability beyond the victim's 25th birthday UNLESS there are findings that they had a duty of care towards the victim, some degree of responsibility or control over the perpetrator, and were grossly negligent. The 2017 changes in the law were seen at the time as not perfect, but making progress. SB686 would continue this progress and help more survivors.

The Committee should consider enacting alternative means of recovery for survivors who will not be able to file a private lawsuit, and to respond to the very real risk that reviving claims may be found to be unconstitutional. Efforts to help provide meaningful access to civil remedies for survivors of sexual abuse have dragged on for decades. Over time, perpetrators have died, witnesses' memories have faded, and the likelihood of winning lawsuit has lessened. The pain and need of survivors has remained. Maryland has failed these survivors.

The State should consider the needs of all survivors of child sexual abuse and create options for survivors that will not be helped by private trial attorneys. Options to support survivors could include establishing a fund to provide reimbursement for healing therapies, and permitting the State to bring lawsuits when potential recovery is too low to interest private trial attorneys or when a survivor would prefer government representation. MCASA fully supports the choices that adult survivors will make to pursue private lawsuits if this bill is enacted. We also support the many survivors who will not benefit private lawsuits and ask that this Committee take steps to support them as well.

We note that there are significant concerns regarding the constitutionality of reviving causes of action. Alternative means of recovery could help respond to the very real risk that this bill will be found unconstitutional (see, Briefing, Child Sexual Abuse and Civil Statute of Limitations). Certainly, any ethical attorney would advise a survivor of this significant risk and some survivors will decide not to file suit. It is only humane to provide support to a survivor of child sexual abuse who chooses not to go through the rigors of litigation or whose case has been weakened by the passage of time.

Child sexual abuse causes devastating problems for many of its victims. Child sexual abuse victims can suffer depression, aggression, somatic complaints, problems sleeping, eating disorders, regression, sexual acting out or promiscuity, seductive behaviors, self-mutilation, substance abuse, and suicide gestures and attempts. Long-term effects of child sexual abuse include post-traumatic stress disorder, difficulties forming relationships, early teenage sex with older men, prostitution, and poor self-esteem.

Victims of child sexual abuse need access to the civil justice system. The difficulties caused by child sexual abuse have real costs: emotional and financial. Victims often require and benefit from counseling. Others incur medical costs or have difficulty maintaining employment or schooling as a direct result of the abuse. It is unfair to force the victim to bear the costs of the harm caused by a perpetrator of child sexual abuse. Criminal restitution and family court provide only limited relief in a small number of cases. For most victims, access to the civil tort system or some other alternative is needed.

Child sexual abuse cases brought by adult survivors present unique circumstances and injuries that do not conform to the usual policy concerns supporting statutes of limitations. The Supreme Court of Nevada eliminated the statute of limitations in child sexual abuse (CSA) cases where a victim can make a preliminary showing by clear and convincing evidence that abuse occurred. That Court observed:

> In a sense, such survivors are analogous to victims of false imprisonment, where each new day of confinement creates a new cause of action. Unfortunately, however, CSA survivors are hostage to their own thought processes, implanted by their abusers, and from which they may never be totally released. Indeed the mental and emotional dysfunction suffered by such victims may virtually prevent them from seeking relief against their tormentor until the period of limitations has long since expired. To place the passage of time in a position of priority and importance over the plight of CSA victims

> would seem to be the ultimate exaltation of form over substance, convenience over principle. Peterson v. Bruney, 792 P.2d 18, 24-25 (1990).

Other states have extended statutes of limitations in child sexual abuse cases via statute. See, for example, Maine (no statute of limitations for sexual acts towards minors; Me.Rev.Stat.Ann. 14 §752-C), Alaska (no statute of limitations for civil cases involving felony sexual abuse of minor or felony sexual assault; AS 09.10.065), and Connecticut (no statute of limitations if perpetrator convicted of certain sexual crimes, 30 year statute of limitations in other child sexual abuse cases, Public Act 02-138).

Maryland's case law clearly prevents child sexual abuse victims from bringing suit after the strict limits of the statute of limitations. Unlike the Nevada court quoted above, Maryland courts have refused to expand the statute of limitations in child sexual abuse cases. In *Doe v. Archdiocese of Wash.*, 114 Md.App. 169 (1997), a victim attempted to extend the statute of limitations by arguing that, for a long period of time, he was unable to understand that sexual acts forced on him by priests when he was child were wrong. The court rejected the victim's argument that the cause of action was not discovered until the victim realized the wrongness of the sexual abuse, and the case was dismissed. In another case, *Doe v. Maskell*, 342 Md. 2384 (1996), cert. denied, 519 U.S. 1093 (1997), the Court of Appeals refused to toll the statute of limitations based on a two girls' claims that they had repressed memories of child sexual abuse by a school chaplain. The victims in both these cases were denied the opportunity to even present their cases to a jury. They had no meaningful access to civil justice.

Children molested and sexually exploited are especially unlikely to be able to promptly file suit. Perpetrators use many tactics to prevent their victims from disclosing abuse. These range from threats against the victim or loved ones, manipulating the victim, convincing the victim nothing is wrong, and exploiting the victim's desire to keep a family together. Some victims remain financially and emotionally dependant on the perpetrator well into their early adulthood. Others face pressure from other family members to remain silent, or have a deep sense of shame. SB686 responds to this reality and would put Maryland's public policy clearly on the side of justice for victims of child sexual abuse.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to report favorably on Senate Bill 686

Testimony 2023 SOL reform.pdf
Uploaded by: Mary Corzine
Position: FAV

My name is Mary Corzine, and I am here to provide testimony as a survivor of childhood sexual abuse in support of HB 686
When I found the courage to come forward and tell a teacher, multiple priests, and a therapist the response was devastating.
I was told:
He is sick- it's not his fault.
You'll feel better when you forgive him.
Vengeance belongs to God alone. This last one is a common offering to victims and is particularly painful to me.
At least you weren't raped.

Is it any wonder that victims don't come forward for decades when this is the response they receive?
I tried several times to tell my parents but became overwhelmed with panic, worrying about what would happen next. I didn't know the words to describe what was happening. I was in fifth grade when I was instructed to sit on the abuser's lap in a darkened room in an empty house on school property. I thought he had a stick in his pocket -repeatedly poking at me. I was instructed to wrap my arms around his neck tightly while he "talked" to me. When it was over I flew outside red-faced and crying and went to the school bathroom, my uniform was wet with a substance unidentifiable to me. I wiped it off and returned to class feeling numb and overwrought at the same time.
This happened several times in the same house and also in the boiler room in the school where I was placed across the top of a child-sized desk hidden in the back. I told a teacher about the abuse, and she never told my parents. My abuser was then moved to a different parish. Later, in 1986 I learned an 8th grade boy attempted suicide after being abused by the same man.The priest, now laicized at his request, was working as a basketball coach in the same archdiocese. He later pleaded guilty to four counts of sodomizing a minor, admitting to sexually abusing six other boys more than 50 times in the previous six years.
A plea deal granted him immunity from prosecution for abusing the other six boys. He served 9 months and is not on the Maryland Sex Offenders registry. It's heartbreaking to me that a person can commit repeated, constant and calculated pedophilia in Maryland and get away with it. He is a perfect example of how abusers will continue to abuse unless they are stopped. This bill will help to expose abusers like him, and protect children in the future.
Today, I am here for them as well as myself. When victims come forward perpetrators are exposed and children are safer. Predators depend on the statute of limitations to be able to continue to practice their compulsions. Institutions further protect abusers when they consistently demonstrate a lack of courage by protecting their institutions rather than its victims. There is hope for survivors but without resources trauma can seem insurmountable.

Thank you and please support HB 686.

Matthew.Wolf.Child Victims Act 2023.docx.pdf
Uploaded by: Matthew Wolf
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Matthew S. Wolf

DATE: February 23, 2023

My name is Matthew Wolf and I am a survivor of child sexual abuse. Such a simple sentence to share, only 14 words. You'd think it would be easy to say, but it has taken me nearly 30 years to find the courage to share my experience.

Sadly, the sexual abuse I endured is not unique. Although estimates vary across studies, we now know that one in four girls and at least one in 13 boys experience sexual abuse at some point in childhood. And if that number wasn't shocking enough, consider the fact that most likely it's a conservative estimate because the data is taken from participants who were willing to disclose their experiences. Consider also, the average age of disclosure of child sexual abuse in the U.S. is 52. That means countless adults have yet to tell anyone that they were sexually abused as a child — not their partners, not their friends, not their family members.

You may be hearing this and thinking, how can so many of our family and friends be carrying the pain of this trauma without us knowing? There are many reasons survivors carry this trauma alone. We know that developmentally, children simply do not have the emotional and cognitive skills to process traumatic experiences. As a result, children often either wait to report or never report child sexual abuse, even into adulthood.

I can't speak for all survivors, but I know that for many adults like myself, my abuse is a secret that weighs heavily. For many survivors, our abusers walk free or the institutions that enabled the abuse are not held accountable. Ultimately, I waited till my 40s to speak publicly about my abuse, because it is re-traumatizing to talk about what happened, and the idea of being vulnerable and opening up about the abuse is terrifying. But, the simplest explanation is that I was just not ready.

My abuse happened at the hands of a trusted coach/teacher. I was tricked into believing I was his only victim. I had to watch friends and my school community memorialize his

memory at his passing. Even after 30 years, I’m still a kaleidoscope of emotions on the topic: anger, disappointment, embarrassment, and fear. But I am finally ready to confront what happened to me.

Now imagine holding all those emotions in for 30 years, finally finding the strength to come forward to try and hold accountable those responsible, only to be told: “You waited too long,” “We’re sorry, but too much time has passed,” and “Why didn’t you bring this up sooner?"

Reforming the civil statute of limitations is critically important for survivors of abuse (like myself) because we all heal at different speeds. This isn't like a broken leg where there is an understood timeline to repair. Sexual abuse impacts us all in different ways, so allowing men and women to make the transition from victim to survivor at their own speed (when they are ready) is the compassionate and morally justice course of action. For these reasons, I respectfully urge a favorable report on SB 686.

Megan Venton Senate testimony for the Child Victim

Uploaded by: Megan Venton

Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Megan Stone Venton

DATE: February 23, 2023

I strongly support SB 686. I'm not going to talk about what happened to me. It's degrading to talk about it again. It's a matter of record: Washington Post August 19, 2018.

I will say that when I told my guidance counselor about this perpetrator, when he was trying to determine why I seemed to be psychologically and academically crashing,
his reply was "I know, baby; I've got eyes." Dozens of perpetrators, dozens of victims were involved at this school. Only one person was fired to my knowledge, and it was done quietly.

I will say that what happened to me has had a profound influence on my life; on my relationships, decision-making, emotional and physical health, and my ability to trust anyone to not be a predator. I have to work every day to minimize its' impact, with many hours of cognitive therapy; and I am coming up on being a senior citizen.

It's tremendously difficult and frightening to report sexual abuse, at any age; but when one is somewhat older, one has a better chance of withstanding the tremendous emotional fallout; the horror, pity, disgust, isolation; the excruciating feeling of exposure.

Please help us shift the burden of this sort of damage off of the taxpayer and rightfully onto the shoulders of the institutions that used us with such impunity.

Let's also expand the threat against future pedophiles and the institutions that shelter them.

Let's save some lives.

For these reasons, I respectfully urge a favorable report on SB 686.

SB 686 Written Testimony Nancy Andryszak Fenton.pd
Uploaded by: Nancy Fenton
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Nancy Andryszak Fenton

DATE: February 23, 2023

I am one of the 42 million adult survivors of sexual abuse in the United States and I strongly urge you to support SB 686 as it would provide an opportunity for victims of sexual abuse to seek justice from the public and private institutions that failed to protect them as children. SB 686 eliminates the statute of limitations and provides an opportunity to pursue legal recourse for the justice that was denied to so many people. With the passage of this legislation, Maryland would join a growing number of states that have passed similar laws to eliminate the statute of limitations.

More than 50 years ago I was sexually abused by a Baltimore public school teacher who is now serving four life sentences for the rape of a middle school student in a Baltimore Catholic school. The abuse was on-going and torturous. It was often witnessed by my fifth and sixth grade classmates. As an 11-year-old child in the 1969-1970 school year, I had no words to understand what was happening to me. "Sexual abuse" was not a phrase I had ever heard. Today, there is a great deal of scientific knowledge about the long-term impact of childhood trauma. Data and science now drive our understanding of sexual abuse, trauma and the long-term consequences of this heinous, criminal act. This same data has informed the nationwide effort to eliminate the statute of limitations on a state-by-state basis.

Chances are quite high that you know someone in your immediate or extended family, a friend, a member of your congregation or an old classmate who endured sexual abuse as a child. In 2020, a reported 2,059 Maryland children experienced sexual abuse. This is an increase of 3.4% from 2019. The percentage of victims of child sexual abuse in Maryland is significantly higher than the national average of 9%. Don't let Maryland be a leader in the number of sexually abused children. SB 686 will help today's survivors access justice for the crimes committed against them and raise public understanding about how to prevent sexual abuse in the future. For these reasons, I respectfully urge a favorable report on SB 686.

TESTIMONY IN SUPPORT OF SB 686 - FEB 2023.pdf
Uploaded by: sarah conway
Position: FAV

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
SUPPORT

TO: Hon. William C. Smith, Jr., Chair, and members of the Senate Judicial Proceedings Committee
FROM: Sarah R. Conway
DATE: February 23, 2023

Thank you for the opportunity to testify before the committee in support of The Child Victims Act (SB686). I'm a survivor of sexual abuse by two teachers at The Key School here in Annapolis. The abuse began when I was 14 and continued for one year.

In 2019, an independent investigation concluded that at Key 10 people in positions of authority sexually exploited 16 students and that in all but one of these cases, faculty, staff, administrators, or board members were aware of the abuse and chose to remain silent rather than intervene or report it.

It may be hard to conceive of how hostile the environment was for victims in the past. Even now when we report we may face tremendous blowback from our school or church community and law enforcement only prosecutes a tiny percentage of our cases.

When my parents confronted the school about the abuse, they only shrugged. When they consulted the AACo. State's Attorney, he strongly dissuaded them from contacting law enforcement because of how harshly victims were treated in those days.

The civil statute of limitations expired for me at 21 — when I still had few words for the pain and confusion I felt and I was not yet strong enough to enter the world of police and courts. In 1993, I did speak out publicly about the abuse and was met with a wall of victim blaming. Key's head of school denied they had any institutional responsibility. In 1997, I detailed my abuse to Anne Arundel County Police and specifically pointed out that it was common practice at Key, Yet no investigation was ever done. Police interviewed me again in 2018. In 2019, the Anne Arundel County State's Attorney's office interviewed me. Still no action. Despite having being raped multiple times by two teachers, they claim they are unsure those were felony crimes at the time.

Turned away, silenced, and shamed by one's school and law enforcement as we try to bring these abuses to light is the definition of institutional betrayal. Research now shows it magnifies the harm caused by sexual abuse. If institutions are causing real, measurable harm not only by allowing the abuse to occur but by silencing the victims, why shouldn't victims be empowered with access to justice so they may hold them accountable for that harm?

For these reasons, I respectfully urge a favorable committee report and passage of Senate Bill 686 without amendments.

Maryland Catholics for Action in support of SB0686
Uploaded by: Susan Kerin
Position: FAV

TESTIMONY IN SUPPORT OF SB0686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Maryland Catholics for Action

DATE: February 23, 2023

My name is Susan Kerin and I represent Maryland Catholics for Action. We are a coalition of lay and religious Catholics who support victims' rights related to the clergy sex abuse scandal. We feel that our institutional leadership has abandoned our injured brothers and sisters. Our leaders have not provided the transparency and accountability necessary to ensure that these criminal activities will end.

Recent pollings reveal that many US Catholics share our concerns. In a 2019 poll by the Economist, one in three US Catholics reported having an unfavorable view of our leadership.(https://bit.ly/2HEjKpe). A Gallup poll also in 2019 noted that 37% of US Catholics are personally questioning whether to remain Catholic because of the scandal. https://bit.ly/2P9msqR

It is important to keep in mind that these polls may actually be minimizing laity concerns. That is because most Catholics have no idea how much money and lobbying resources that our leaders have been spending to undermine bills that provide survivors rights and protection of our children.

Victims have shared with us the stigmatizing responses they have received of not being believed, judged or dismissed. Or hearing magnificent statements from the church hierarchy which never materialize into substantive support. The cost burden of this crime lies predominantly on the victims.

Anyone who is Catholic should regard this scandal as an existential issue: We are facing moral bankruptcy. The laity are the treasures of the church. We are the ones that provide the financial

offertories and the hundreds of thousands of hours in charitable work. Many of us have an alternative narrative compared to the Bishops and I ask that you consider our voices when you think of the Catholic church.

SB0686: The Child Victims Act of 2023 is, first and foremost what all victims of child sexual abuse deserve. Resources and choices to help them heal. But it is also important to us Catholics who feel We are the “treasures” of the Catholic Church accountable and heartbroken by this scandal. Our futures are interwined. This committee has an opportunity to solidify Maryland as a leader in children rights and protections rather than a protector of institutions. We urge this committee to issue a favorable report.

Executive Committee

Susan Kerin St. Camillus Catholic Church Silver Spring, MD

Robert Cooke St. Rose of Lima Catholic Church Gaithersburg, MD

Mary Kate Ryner St. Francis of Assisi Catholic Church Rockville, MD

Suzanne Emerson Blessed Sacrament Catholic Church Bethesda, MD

catholics4actiondc@gmail.com

Final Lancaster Testimony 2023.pdf
Uploaded by: Teresa Lancaster
Position: FAV

Teresa F Lancaster
Testimony for SB686 - Child Victims Act of 2023

GOOD AFTERNOON MEMBERS OF COMMITTEE, my name is Teresa Lancaster. I am an Attorney, survivor, activist, and advocate for victims of childhood sexual abuse. I was abused 1970-72 at Archbishop Keough High School by the counselor there, Father A. Joseph Maskell.

You may know me from The Keepers documentary. This 7-part docuseries exposed the sex abuse ring at Keough run by Father Maskell and how one brave nun, Sister Cathy, ended up brutally murdered after trying to help the girls being abused.

I was unable to come forward about my abuse in the 1970's because Maskell convinced me I would not be believed, and he threatened me with his gun. I FEARED FOR MY LIFE.

This is common among survivors. Why? The severe nature of the trauma endured coupled with the often-high social position of the abusers are factors that prevent survivors from coming forward earlier. Other factors are depression & substance abuse. The support group RAINN reports that 20% of survivors fear retaliation if they come forward. Studies show the average age to come forward is 52. Reasons for the delay in reporting the abuse are specific to the individual.

I struggled with the fact that my abuser was someone I trusted. I was raised in the strict Catholic Religion and was taught that the priests were literally God on earth. Additionally, my abuser had the respect of the entire community.

Father Maskell was very intelligent, had a degree in psychology, and used his skills to groom both victims and their parents. He had total control of his victims. As a counselor at Keough, he had free reign over the girls at Keough. He prayed on the vulnerable.

Maskell filled positions of power as a police chaplain as well as a military chaplain for young recruits. He always had access to young victims. Through my work helping other survivors, I learned that Maskell abused kids as young as 3 years of age.

When Jean Wehner and I came forward and started our civil lawsuit in 1993 as Jane Doe and Jane Roe, we quickly realized that the institution we held our trust in would again betray us. The Catholic Church has a long history of hiding their pedophile priests and shipping them from parish to parish. Betrayal of a trusted institution adds another difficult layer onto the trauma of abuse.

Cardinal Keeler knew our case was credible but used the Statute of Limitations (SOL) to make our case go away. **I respectfully ask you to pass SB686, Child Victims Act of 2023.**

SB686 will: 1. Provide a path to justice for victims ready to come forward. 2. Help Identify Hidden Predators, and 3. Disclose facts of the sex abuse epidemic to the public. Thank you.

SB686_AGR_FAV.pdf
Uploaded by: Therese Hessler
Position: FAV

AG
ASHLAR GOVERNMENT RELATIONS

February 23, 2023

SB686 -Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)
Senate Judicial Proceedings Committee
POSITION: SUPPORT

Dear Chairman Smith, and members of the Senate Judicial Proceedings Committee,

My name is Therese Hessler and I am writing today to ask for your ***support*** in the passage of Senate Bill 686 – Child Sexual Abuse – Definition, Damages, and Statute of Limitations. If passed, this legislation will give survivors of childhood sexual abuse justice and will help to protect today's children from predators.

It has been my honor to work alongside the numerous advocates (many of whom are survivors) on this legislation for the past several years. During this time, other individuals in my life have chosen to share their personal stories of childhood sexual abuse with me, many of whom had never shared their personal story with another individual prior; and whom under our current law would not be able to file a civil claim based on their age. These survivors are some of my best friends, family members, neighbors and colleagues, and other times just an individual who I had recently met somewhere whom asked what I was working on.

Childhood sexual abuse is sadly more prevalent than most people care to imagine, and I am still shocked at how many people I know personally that have been through something this horrific and carried the weight of this alone their entire lives. Unfortunately, chances are that by some degree or another childhood sexual abuse has affected everyone in this committee room today. Although estimates vary across studies, the research shows about 1 in 4 girls and 1 in 13 boys in the United States experience child sexual abuse.[1]

There are many reasons that individuals who have been sexually abused do not come forward or have an average age of disclosure of 52 years old.[2] Victims will frequently cite shame, fear of social stigmatization or ridicule, and fear of not being believed. Perpetrators of sexual abuse may threaten the child or family with physical harm or may threaten the child that she will be taken away from her family. Perpetrators often blame the child for the abuse, and the child internalizes this self-blame. Abused infants, toddlers, and other very young children may not understand that what is going on is abuse. And 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.

[1] https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html
[2] 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.

It is up to all of us – members of this committee, the Senate and the House as well as the citizens of Maryland to do what is right and to not only give a voice to survivors that may have never been heard by passing this lifesaving legislation but also to protect today's children from sexual predators that have never been exposed due to current law.

It is for these reasons, I politely urge a favorable report on Senate Bill 686.

Thank you,

Therese M. Hessler
CEO, Ashlar Government Relations
47 State Circle STE 202
Annapolis, MD 21401

For more information call or email:
Therese M. Hessler | 301-503-2576 | therese@ashlargr.com

SB0686_Tom and Tina Wilson_Favorable.pdf
Uploaded by: Thomas Wilson
Position: FAV

Written Testimony of Thomas P. and Tina M. Wilson

RE: In Support of Senate Bill SB0686 - Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations (The Child Victims Act of 2023)

February 22, 2023

As citizens of the state of Maryland, we enthusiastically support Maryland **Senate Bill SB0686.** This testimony seeks to express our rationale for support of **SB0686.** For victims of sexual abuse, justice has been difficult to find. We hope our legislators understand the urgent need to remove age and time constraints on civil claims in Maryland for victims of childhood abuse and support this bill.

As reported by several media outlets, a long running investigation by Maryland's Attorney General Brian Frosh found more than 150 Roman Catholic priests in the Archdiocese of Baltimore have been accused of sexually and physically abusing more than 600 victims over the past 80 years. Frosh identified 115 priests who were prosecuted for sex abuse or that had been identified publicly by the archdiocese as having been "credibly accused" of abuse. Another 43 priests had been accused of sexual abuse but were not identified publicly by the archdiocese.

The information from the investigation that started in 2019 resulted in a 463-page report that is not yet public. The Maryland Attorney General filed a motion in Baltimore Circuit Court to release the report, which includes information retrieved via grand jury subpoenas, but the report has not been released.

As evidenced by the progress of the Attorney General's push for the public release of information from the investigation, justice can be difficult to find for victims of molestation, assault, and childhood sexual abuse. Many survivors don't begin to accept the abuse until they are far into adulthood. Due to this delay, it is normal for adults in their 30s, 40s, or 50s to acknowledge and admit to having been the victim of child sexual abuse. Despite this fact, civil statute of limitations laws around the country have been slow to change to reflect this reality,

Through SB0686, restoring adult victims of child sex abuse's civil claims is a means to ensure that justice is served in cases when the civil statute of limitations has passed, allowing individuals the chance to initiate civil actions if they so choose to correct the wrongs done to them. Older accusations of abuse should be admissible for a variety of reasons, including the importance of maintaining the public's safety. Most directly, abusers and those complicit in enabling them are exposed, helping protect other children from the same fate.

We strongly support SB0686 and believe it absolutely necessary to protect those who have experienced sexual abuse from predator priests.

SB686.pdf
Uploaded by: Wendy Lane
Position: FAV

State Council on Child Abuse and Neglect (SCCAN)

Wendy Gwirtzman Lane, MD, MPH, Chair
Mobile: (443) 904-2533
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wlane@lifebridgehealth.org

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 686:

CIVIL ACTIONS – CHILD SEXUAL ABUSE – DEFINITION AND STATUTE OF LIMITATIONS (The Child Victims Act of 2023)
****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)

DATE: February 21, 2023

SCCAN strongly supports SB 686, Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations. This bill has five key components: (1) Eliminating the statute of limitations for child sexual abuse; (2) Repealing the so-called "statute of repose"; (3) Establishing a permanent lookback window to allow victims previously barred by the statute of limitations to file suit; (4) Allowing both public and private entities to be sued; and (5) Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.

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 more than 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.[7i]

Some opponents of SB 686 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

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[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-cla

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 686, 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 right,[iii] 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 686 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)

Senate Bill 686 / House Bill 1
Senate Judicial Proceedings Committee/House Judiciary Committee
Civil Actions – Child Sexual Abuse – Definition and Statute of Limitations
(The Child Victims Act of 2023)
**** SUPPORT ****

February 21, 2023

Dear Committee Members:

We know the statistics that 1 in 5 girls and 1 in 13 boys will experience child sexual abuse before reaching adulthood. We have learned through research that the adverse experiences we face in childhood (ACEs) change the structure and function of our brains and have lasting individual and societal impacts into adulthood. The trauma associated with childhood sexual abuse too often leads to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The impact is felt by all of us. According to the CDC, the economic burden of child sexual abuse is over $9 billion annually. Endorsed by a broad coalition of support and buoyed by the strong national trend on this issue, we are writing to ask for your support for HB01 The Child Victims Act of 2023.

Across the country, state legislators are recognizing that change needs to happen. Since 2002, 50% (27 jurisdictions) of U.S. jurisdictions have passed revival legislation. Seventeen states, D.C., and Congress have eliminated civil statutes of limitation for child sexual abuse. In September 2022, Congress passed the bipartisan "Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022." Changes in these laws have given adult survivors of child sexual abuse another pathway to healing and justice. Most importantly, SOL reform, especially revival legislation, protects children now by exposing hidden predators and those that conceal them.

The Child Victims Act of 2023 would:

1. Eliminate the statute of limitations for child sexual abuse.
2. Repeal the so-called "statute of repose".
3. Create a permanent window for older claims.
4. Allow both public and private entities to be sued.
5. Eliminate the notice of claims deadlines for public entities in child sexual abuse cases. 6. The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence:
    a. for retroactive claims (the statute of limitations has already run):
        i. for private entities:
            1. $1.5 million cap on non-economic damages
            2. no cap on economic damages
        ii. for public entities:

1. $850,000 cap for damages

b. for prospective claims (the statute of limitations has not run):

i. for private entities

1. no caps on either economic or non-economic claims

ii. for public entities

1. $850,000 cap for damages

Maryland has no criminal statute of limitations for felonies, including those involving child sexual abuse. However, criminal and civil proceedings provide different remedies, and both are necessary for justice to be served. Certainly, we can all agree that survivors should have every option available to heal.

Not only does this bill provide support and access for adult survivors, it provides preventative protection to children. In states where windows are opened, hidden predators are exposed. In Minnesota, under their 3-year lookback window, 125 predators were identified, In California, under their 1-year lookback window, 300 predators were identified. For our neighbors in Delaware, the lookback window uncovered Dr. Earl Bradley, the most active, previously undisclosed predator to date, who as a pediatrician had 1,000 victims.

Collectively, we are saying enough is enough. Those who sexually abuse children, and the institutions that protect abusers, must be held accountable. Survivors deserve access to justice. Maryland can and must do better. We urge you to support the passage of The Child Victims Act of 2023 in the Maryland General Assembly this year.

JUSTICE 4 MD SURVIVORS
PROTECT KIDS, NOT PREDATORS

MARYLAND essentials for childhood

NAACP Maryland STATE CONFERENCE

CASA Court Appointed Special Advocates FOR CHILDREN
MARYLAND CASA ASSOCIATION

Maryland Chapter
INCORPORATED IN MARYLAND
American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN
Speaking for Maryland Kids!

DELAWARE-MARYLAND SYNOD

baltimore county progressive bcpdc democrats club

CHILDUSA
THE NATIONAL THINK TANK FOR CHILD PROTECTION


GBMC


A LIFEBRIDGE HEALTH GROUP
CENTER FOR HOPE


MARYLAND
FAMILY
NETWORK


MCF
maryland coalition of families


Maryland Children's Alliance, Inc.


Child justice
PROTECTING CHILDREN, PROVIDING SUPPORT, PROMOTING CHANGE


CENTER for CHILDREN


BOYS & GIRLS CLUBS
OF HARFORD & CECIL COUNTIES


CITI Ministries
Celibacy Is The Issue


HARRITY4CHARITY


The Family Tree


AG
ASHLAR GOVERNMENT RELATIONS

JOHNS HOPKINS BLOOMBERG SCHOOL OF PUBLIC HEALTH
The Moore Center for the Prevention of Child Sexual Abuse

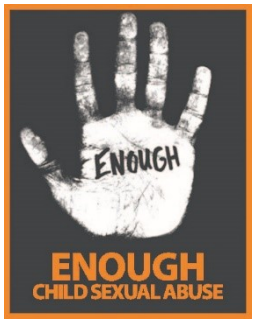
SNAP

THE EPISCOPAL DIOCESE OF MARYLAND

MCASA
Maryland Coalition Against Sexual Assault

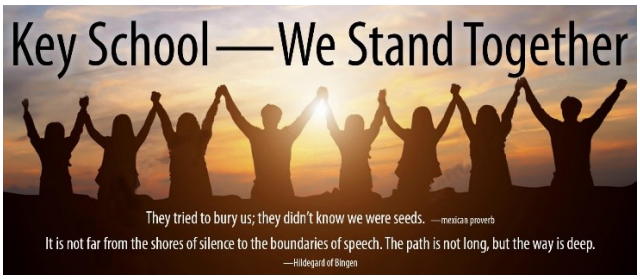
Celebrating 50 yrs 1968 2018
Celebrating New Ministries
For A New Millennium
Federation of Christian Ministries

MEPPN
Maryland Episcopal Public Policy Network



Housing Authority of the City of Frederick

Heartly House, Inc.
Serving survivors of domestic violence, sexual assault, human trafficking, and child abuse



CHILD USAdvocacy


first
star
INSTITUTE


MOST
NETWORK
Leaders in Youth Development


Mid-Atlantic
P.A.N.D.A.
midatlanticpanda.org


KROS
LEARNING GROUP


HARRITY
THE GO-TO FIRM FOR THE PATENT 300™


BEAU BIDEN FOUNDATION®
FOR THE PROTECTION OF CHILDREN


CRBC
Citizens Review
Board for Children


Prevent Child Abuse
Maryland™


Needworking


circle of parents®
Sharing Ideas. Sharing Support.

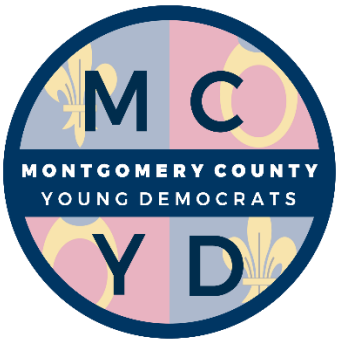

Maryland Catholics for Action

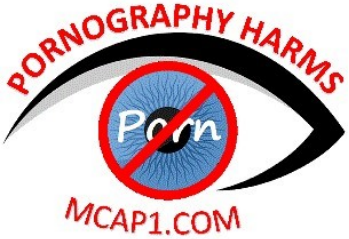

ProMD Health


RENEW YOUR CORE
WITH TRAUMA HEALING


PARENTS' COALITION
of Montgomery County


No
More
Stolen
Childhoods


M C
MONTGOMERY COUNTY
YOUNG DEMOCRATS
Y D


PORNOGRAPHY HARMS
Porn
MCAP1.COM


MAROON PR
Creative Communications


ProMD
helps


Enradius


Progressive Neighbors

THE CHILD VICTIMS ACT OF 2023 (HB1/SB686)

Will Maryland protect its children or protect its predators?

GOALS OF THE CHILD VICTIMS ACT (HB1/SB686)

- Identify Hidden Predators
- Disclose Facts of Sex Abuse Epidemic to Public
- Arm Trusted Adults to Protect Children
- Shift Cost of Abuse from Victim to Those Who Caused It
- Justice for Victims Ready to Come Forward

WHAT WILL THE CHILD VICTIMS ACT (HB1/SB686) DO?

- Eliminate the civil statute of limitations for child sex abuse.
- Repeal the so-called "statute-of-repose."
- Create a permanent window for older claims.
- Allow both public and private entities to be sued.
- Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.
- The legislation will have some limitations on liability to a single claimant for injuries arising from a single incident or occurrence:
  - For retroactive claims (the statute of limitations has already run):
    - For private entities:
      - $1.5 million cap on non-economic damages
      - No cap on economic damages
    - For public entities:
      - $850,000 cap for damages
  - For prospective claims (the statute of limitations has not run):
    - For private entities:
      - No caps on either economic or non-economic claims
    - For public entities
      - $850,000 cap for damages

In 2017, did the Maryland General Assembly intend to include a "statute of repose" in the legislation?

A: A "statute of repose" gives constitutionality protected property rights to a defendant. It is intended to be used in product liability cases to limit the length of time that the builder or inventor may be held responsible for problems or defects. It was never intended to protect wrongdoing by sexual predators and those that protect them from prosecution or discovery. In 2017 There was no discussion or debate of the constitutional implications of the "statute of repose" in committee or on the floor of either chamber. Neither the Fiscal and Policy Note, nor the Revised Fiscal and Policy Note, make any notice of the pivotal constitutional implications to this law. Neither the constitutionality of a lookback window nor a "statute of repose" in child sexual abuse cases has been decided by the Maryland courts. Constitutionality should be determined by the courts.

The Child Victims Act (HB1/SB686) removes the "statute of repose" language making it clear to the courts, the public, and survivors that the Maryland General Assembly did not intend to vest constitutionally protected property rights in child sexual predators nor the individuals and organizations that hid predators from discovery and prosecution.

How will the permanent window impact institutions that provide education and social services to low-income individuals and communities?

A: Many institutions receive a large percentage of their funding from government agencies as payment for services provided. This bill would have no effect on that funding or the ability to provide those social services. For example, nearly 77% of Catholic Charities revenue comes from governmental agencies. In rare circumstances, an organization may choose to seek legal relief under the bankruptcy code to reorganize their debt. This legal relief does not cause operations to close.

THE CHILD VICTIMS ACT OF 2023 (HB1/SB686)

FACT: There is a national shift towards exposing hidden predators through civil SOL lookback windows.

In 2019, Washington D.C.:

- Extended the civil SOL where victim was under 35-40 with a 5 year discovery rule
- Opened 2 year revival window for victims abused as minors and adults
- **16** states + D.C. have passed "lookback windows" or revival laws and **9** states, including MD, have introduced these laws in 2020

In 2019, New Jersey:

- Extended the civil SOL for child sex abuse to age 55 or 7 years from discovery for claims against individuals, public and private institutions
- Removed claim presentment requirement for claims against public entities
- Opened 2 year revival window for victims abused as minors or adults against perpetrators and institutions

FACT: In other states lookback windows have exposed hidden predators.

In Delaware:

- During 2 year lookback window ('07-'09), **175** survivors filed claims
- Under follow-up window for healthcare providers, **1,000** claims made solely against Pediatrician Dr. Earl V. Bradley, the most active previously undisclosed predator to date

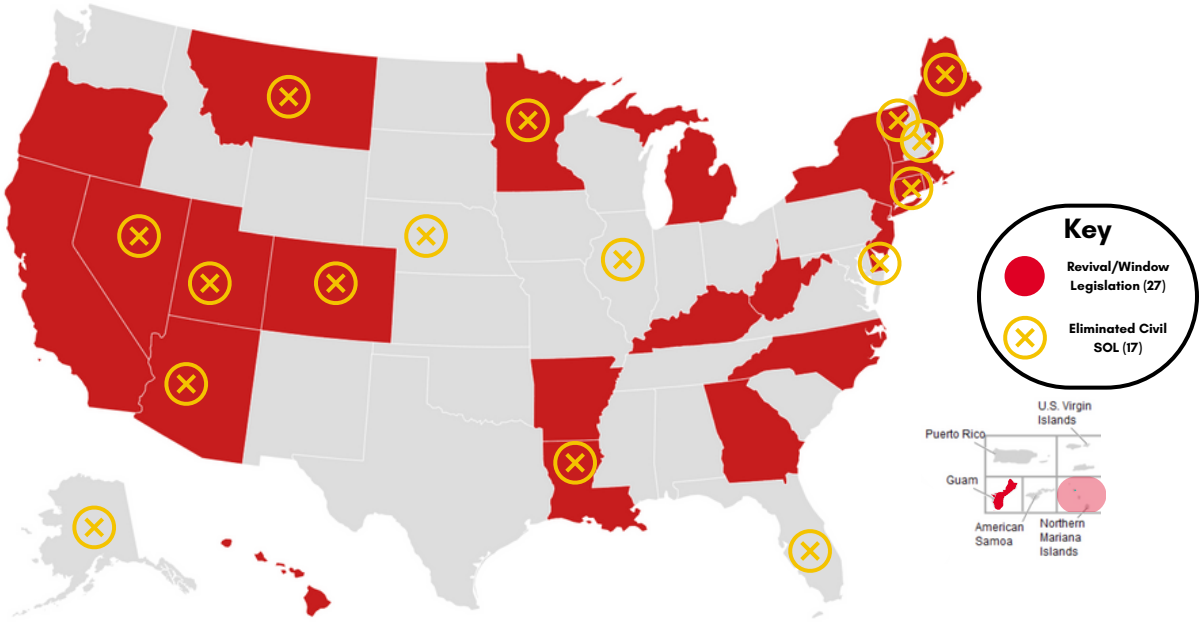
In Minnesota:

- **125+** predators identified, including the predator in the high-profile cold case of Jacob Wetterling
- During the 3 year lookback window ('13-'16), **1,006** claims were filed

In California:

- **300+** predators were identified
- During the 1 year look back window in '03, **1,150** survivors filed claims

SOL Legislation for CSA in the United States - 2022



Is there a need for further civil SOL reform?

A: Criminal and civil proceedings provide different solutions and both are needed for justice to be served. Criminal prosecutions are at the discretion of prosecutors and law enforcement with limited resources and are often not pursued. If pursued, the remedy is a criminal sentence for perpetrators. Civil suits empower victims to initiate a court case to shift the cost from the victim to those who caused the harm.

How will this bill help Maryland prosper?

A: The average age for adults to disclose childhood sexual abuse is 52. Research shows that children who experience an Adverse Childhood Experience (ACEs) can have poor long-term mental and physical health, educational, and employment outcomes at enormous cost to individuals and the state. The trauma from childhood sexual abuse may lead to PTSD, alcohol and opioid abuse, depression, suicide, and poor educational and employment outcomes. The lookback window provides survivors a window of time to access justice and shifts the costs of healing to those who caused the harm. It also provides protection for our children who may still be at risk from formerly unknown abusers and leads to improved institutional practices that keep children safe from sexual predators.

Impact of Child Sexual Abuse

American Academy of Pediatrics

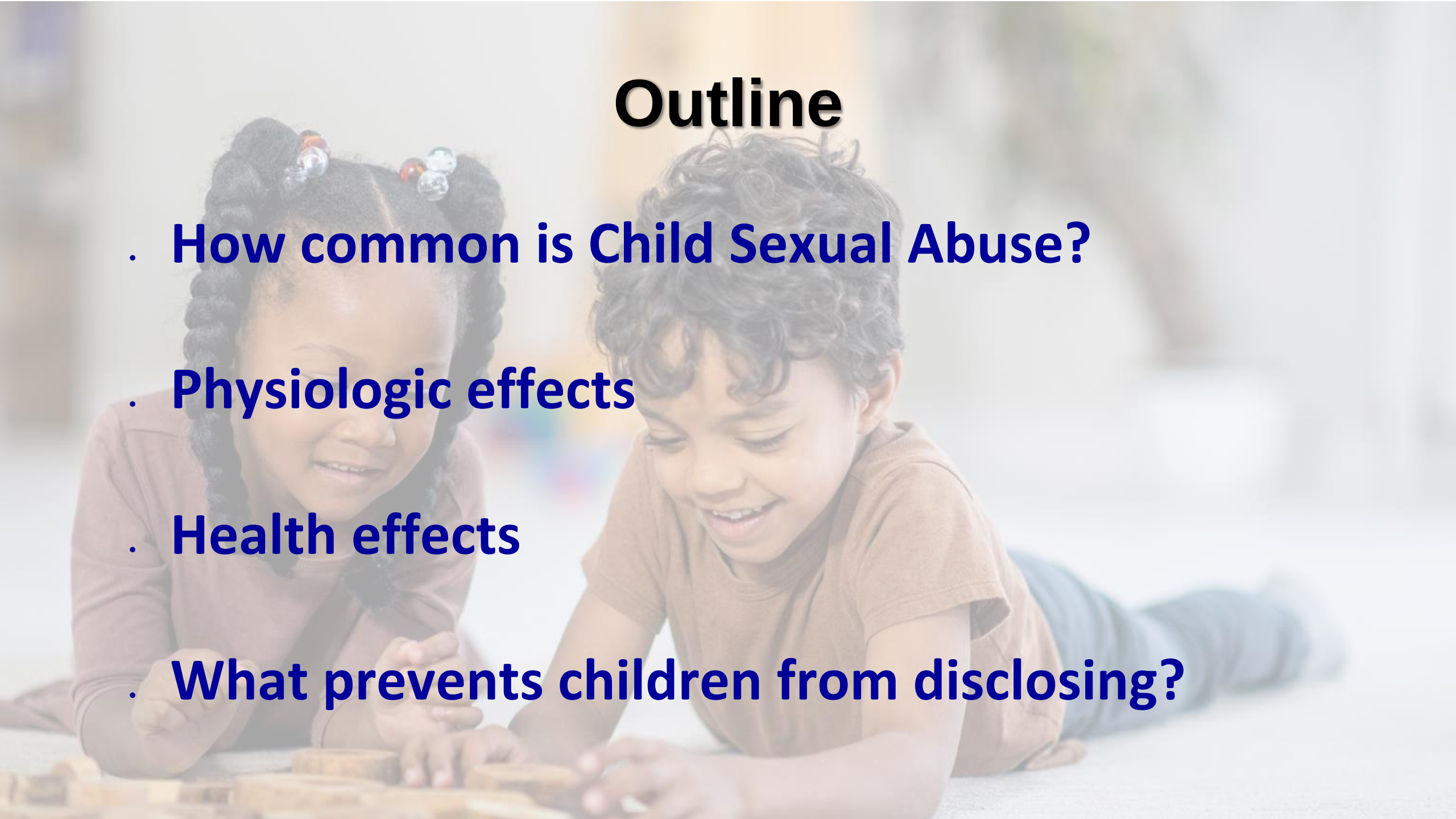
DEDICATED TO THE HEALTH OF ALL CHILDREN™

Maryland Chapter

Wendy G. Lane, MD, MPH

Chair, SCCAN
Co-Chair, Child Maltreatment &
Foster Care Committee - MDAAP

SCCAN
Maryland's
State Council on Child Abuse and Neglect



Outline

- How common is Child Sexual Abuse?
- Physiologic effects
- Health effects
- What prevents children from disclosing?

How Common is Child Sexual Abuse?

New Victims - 2020

United States

- 57,963 children
- 1.1 case / 1000 US children
- 8% of all US maltreatment

Maryland

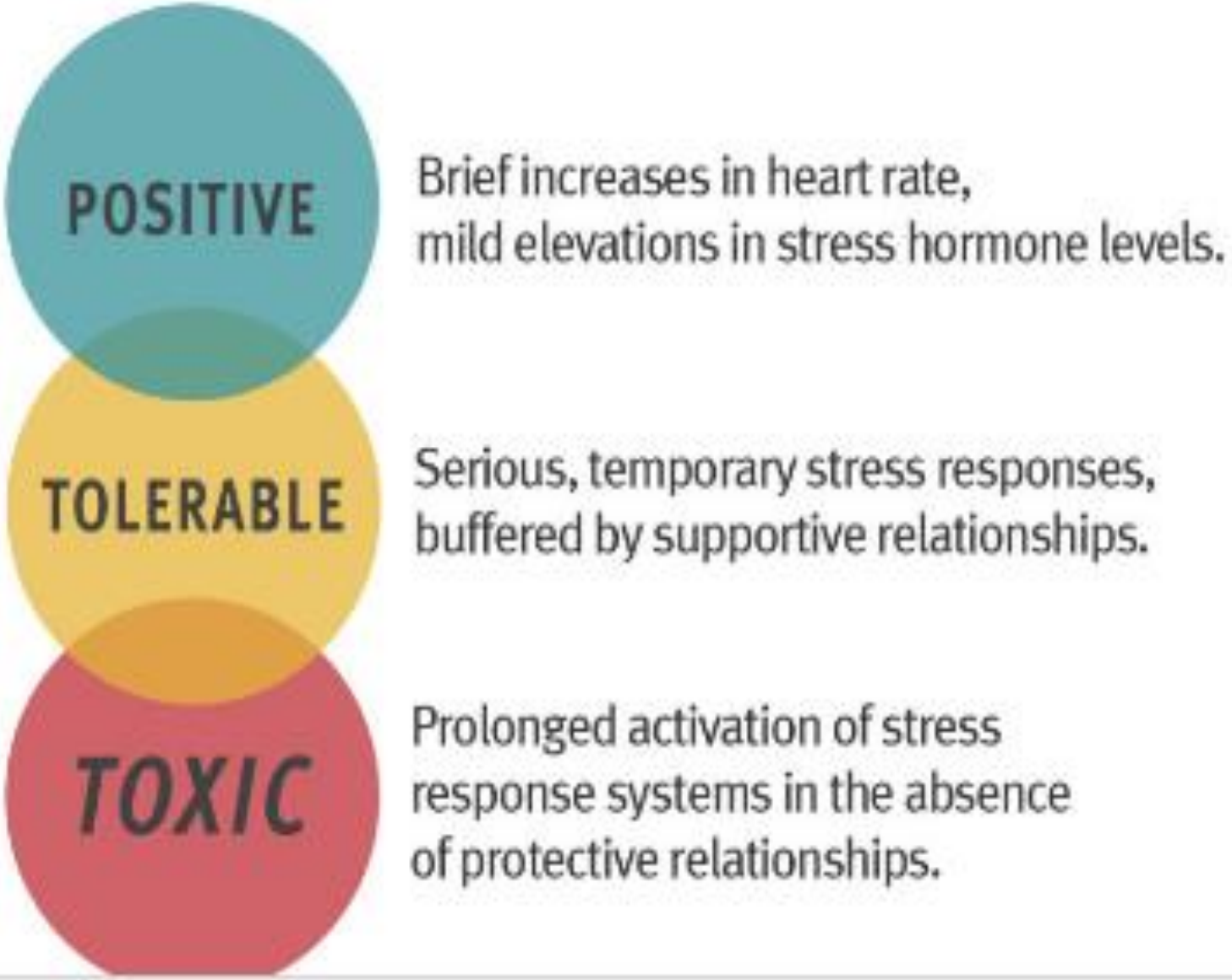
- 2,059 children
- 1.5 cases / 1000 MD children
- 26.5% of all MD maltreatment

Lifetime Risk

19% of women; 9% of men abused as children

https://www.acf.hhs.gov/cb/report/child-maltreatment-2020

Toxic Stress



- http://developingchild.harvard.edu/science/key-concepts/toxic-stress/

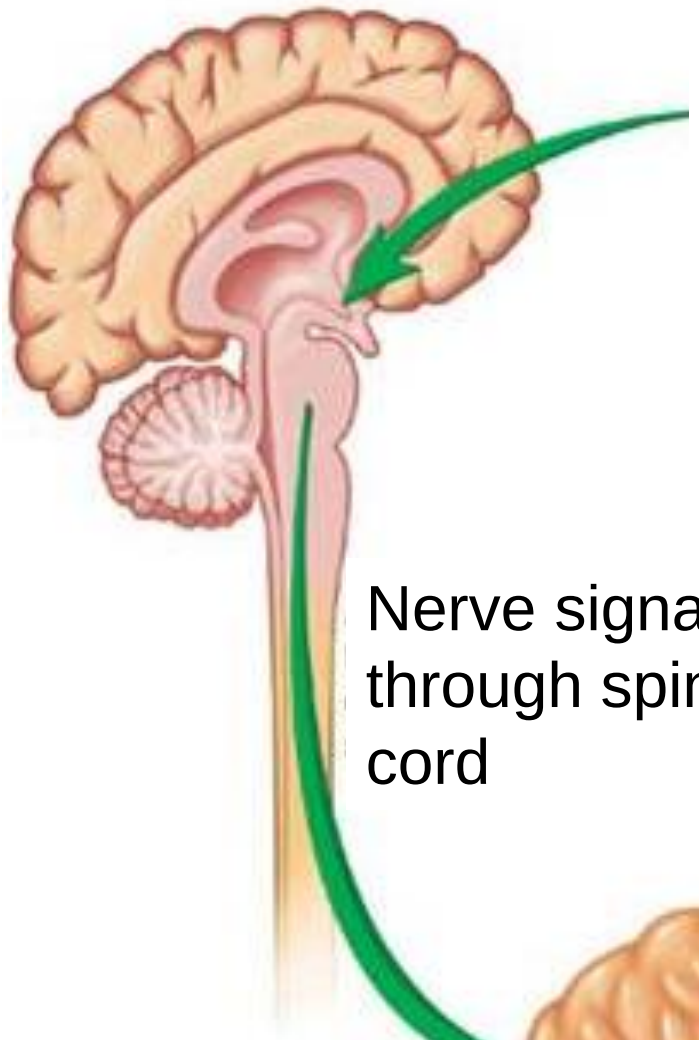
Biologic Response to Stress

- **Activation of physiologic stress-response systems**

- **Hypothalmic-Pituitary-Adrenocortical (HPA)**
- **Sympathetic-Adrenal-Medullary (SAM)**

- **Prolonged or repeated activation →**
  - **Physical disorders**
  - **Psychiatric/psychological disorders**

Sympathetic – Adrenal – Medullary System

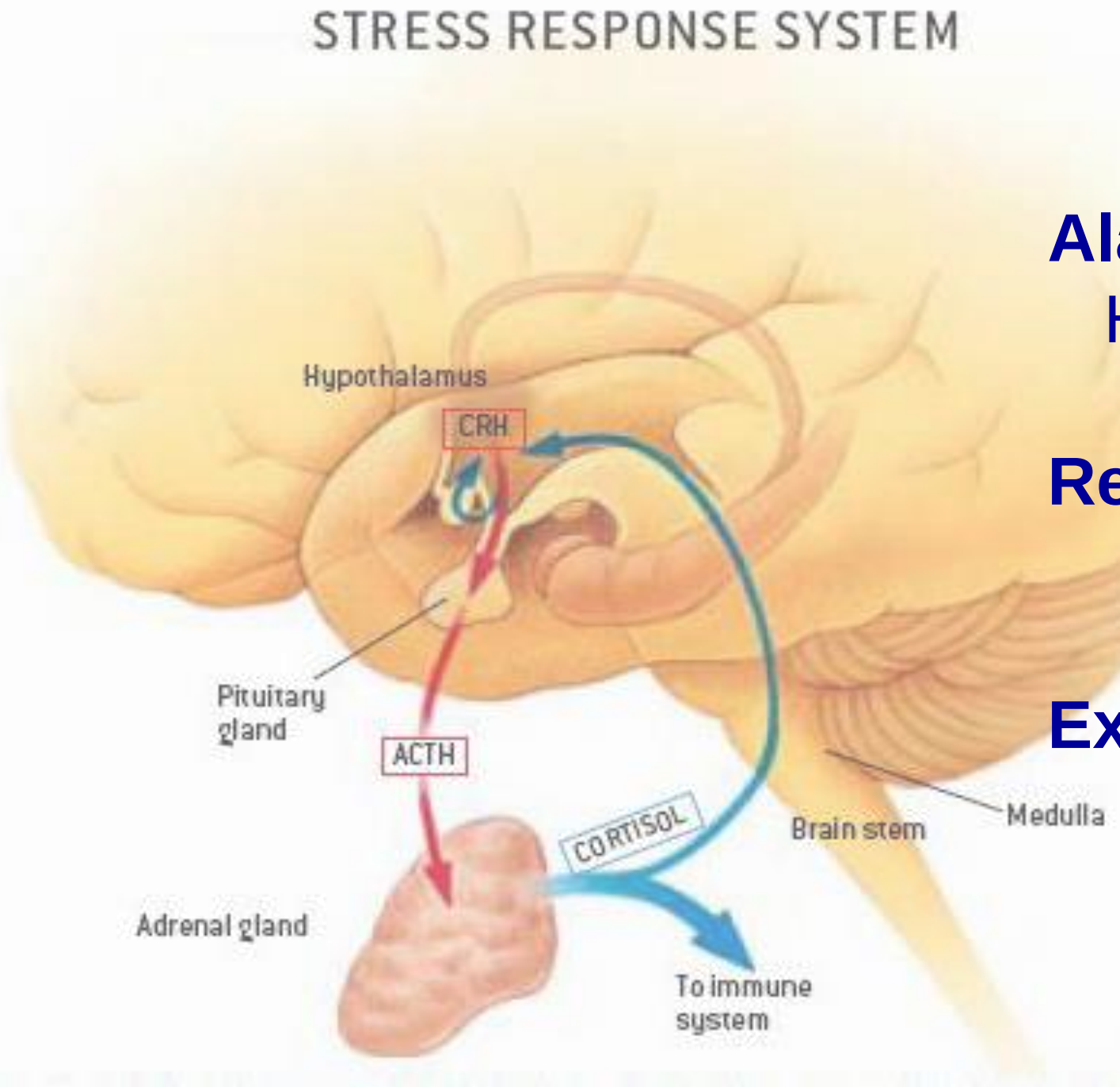


Stress

Nerve signals through spinal cord

Adrenal medulla

Epinppherine
Norepinepherine



HPA Axis

Alarm Stage – Increased Hormone secretion

Resistance – adaptation High, stable output

Exhaustion - overwhelmed

Sexual Abuse and Overall Health

- Association between sexual abuse and:

- Poorer overall health
- Increased chronic disease
- Greater functional limitation

- Association persists even after controlling for depression (Golding, et al, 1997)

Sexual Abuse and Mental Health

3.5X ↑ risk for mental health disorder

Increased risk for:

- Depression
- Bipolar
- OCD
- Anxiety
- Psychosis
- Suicidal ideation

Hogg, European Archives of Psychiatry & Clinical Neuroscience, 2022;
Ferguson, Child Abuse & Neglect 2013

Sexual Abuse & Substance Use Disorder

- 1.73x increased risk of substance abuse

- Increased risk for:
  - Poly-substance abuse in teen girls
  - Opioid misuse during pregnancy
  - Alcohol misuse among MSM

Halpern, Child Abuse Review, 2018; Fletcher, J. Child Sexual Abuse, 2021; Kors, J Child Sexual Abuse, 2022

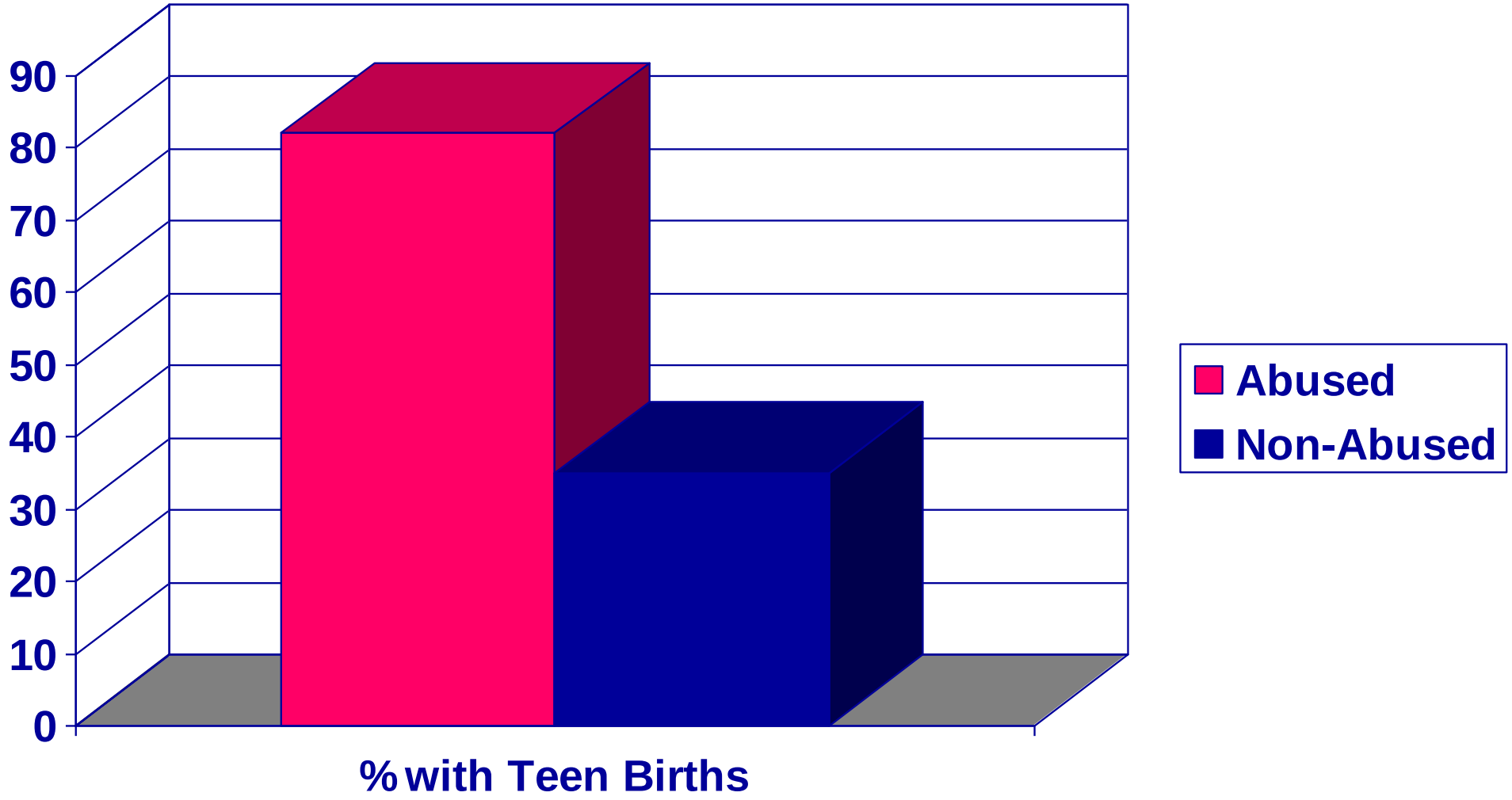
Sexual Abuse and Eating Disorders –

Odds of Disorder compared to those with no CSA

# of CSA Reports	Binge Eating	Purging	Overconcern re: weight
1	1.9	1.7	1.2
≥2	3.0	4.4	1.7

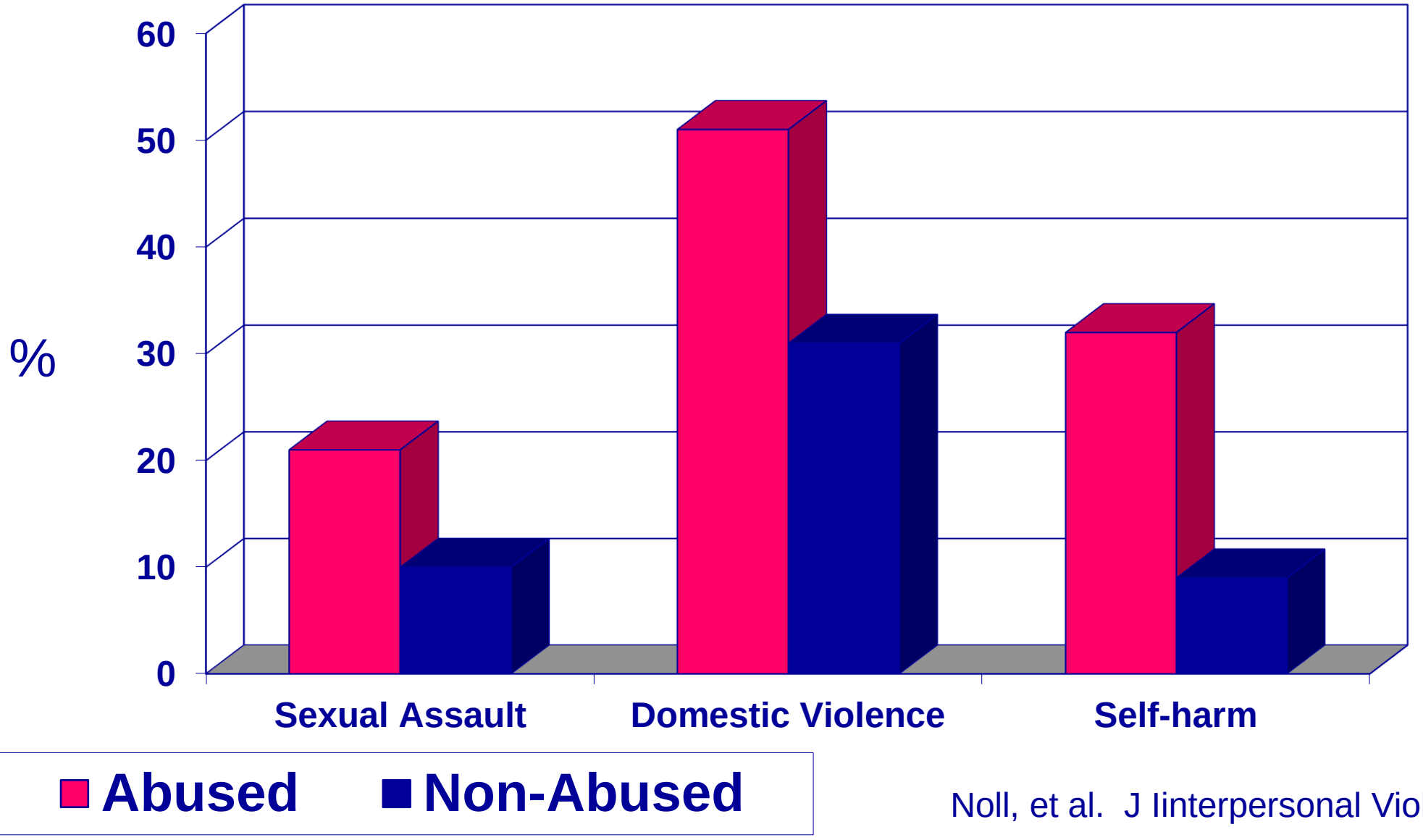
Sanci, et al. Arch Pediatr Adoles Med, 2008

Sexual Abuse and Teen Pregnancy



Noll, et al J Consulting Clin Psychol 2003.

Revictimization



Noll, et al. J Iinterpersonal Violence, 2003

Sexual Abuse and Healthcare Costs

Higher healthcare costs

More doctor visits

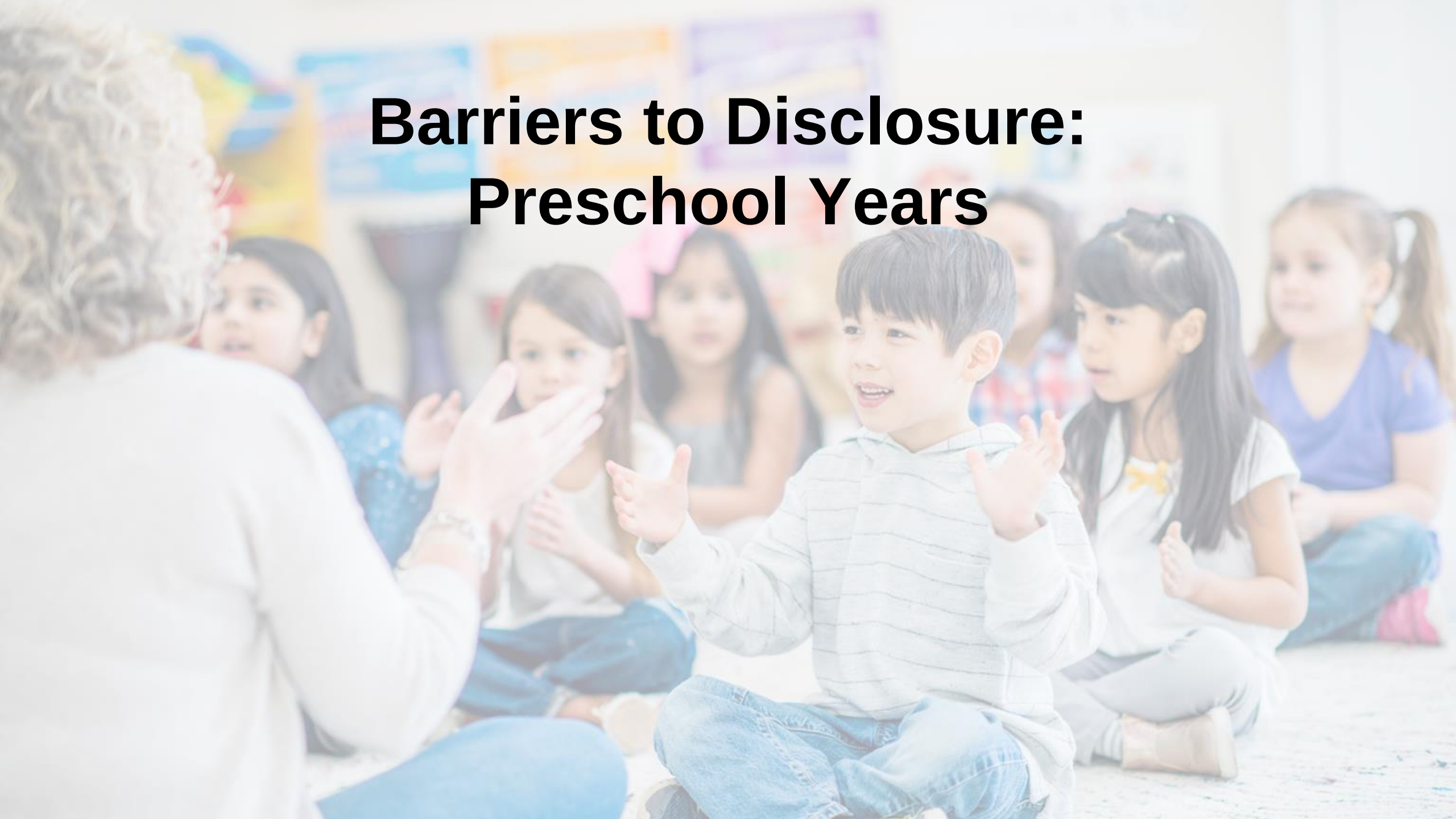
More surgery

More hospitalizations

Felitti, 1991; Golding, et al, 1988; Walker, et al, 1999; Fergusson, 2013

Barriers to Disclosure: Toddlers

Barriers to Disclosure: Preschool Years



Barriers to Disclosure: School Age Children

Barriers to Disclosure: Teens

Thank you!

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Wlane@lifebridgehealth.org

SB 686 - FWA - MML.pdf
Uploaded by: Angelica Bailey
Position: FWA

Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

February 23, 2023

Committee: Senate Judicial Proceedings

Bill: SB 686 – Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Position: **Support with Amendment**

Reason for Position:

The Maryland Municipal League supports Senate Bill 686 with amendments. As introduced, the bill would expand the definition of child sexual abuse, increase damages for victims of child sexual abuse, and extend the statute of limitations for civil actions related to child sexual abuse. While we appreciate the intent of this very important bill, local governments have several concerns about its financial ramifications.

First, this legislation removes a statue of limitations, which would expose municipalities to additional lawsuits related to allegations of child sexual abuse that occurred in the past. The extended statute of limitations allows victims to file civil actions any time, regardless of when the abuse occurred. The bill also applies retroactively. As a result, municipalities could face an increased financial burden in the form of legal fees, settlements, and damages.

This proposal also increases the cap for damages. Under the Local Government Tort Claims Act (LGTCA), the cap for damages for an individual claim is currently $400,000. This bill would raise it to $850,000. This is a very significant increase, especially for smaller municipalities.

MML respectfully requests removing these provisions by linking the cap to the LGTCA, restoring current reasonable limitations on local government liability for claims of sexual abuse, and applying the bill prospectively. With these changes, the League would respectfully request the Committee provide SB 686 with a favorable report.

FOR MORE INFORMATION CONTACT:

Theresa Kuhns	Chief Executive Officer
Angelica Bailey Thupari, Esq.	Director of Advocacy & Public Affairs
Bill Jorch	Director of Public Policy
Justin Fiore	Deputy Director of Advocacy & Public Affairs

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | www.mdmunicipal.org

Sex-Related Catholic Medical Torture-.pdf
Uploaded by: Mary Mueller
Position: FWA

Sex-Related Catholic Medical Torture

Two Baltimore-area priests not likely named as abusers should be added to your list: popular Monsignor Martin A. Schwalenberg Jr., late Orioles chaplain and former pastor of Immaculate Conception in Towson, and Father Thakalahara (spelling?) from India, his order and assignments unknown. Both ruined my life by causing my parents, siblings, relatives, and a thousand others to insult, cheat, and shun me for decades over being disfigured by Munchausen by Proxy Catholic dogma, my mom, and colluding Johns Hopkins dermatologists at age six in 1960 as “contraception sin prevention.” Schwalenberg assured Mom that her disfiguring me was a minor sin compared to her using contraception to avoid pregnancy death or divorce. Her burning me red head to toe to fabricate “a genetic skin disease from my dad” as her long term abstinence extortion excuse certainly took fed-up racist Dad’s attention off their last child Larry looking like Father Thakalahara. Mom ignored Schwalenberg carrying on affairs with Orioles’ wives because she was carrying on with Thakalahara. Since fraudulent Natural Family Planning kept failing her, Schwalenberg directed her to disfigure me instead.
https://www.baltimoresun.com/news/bs-xpm-2004-03-21-0403210039-story.html
https://www.legacy.com/us/obituaries/baltimoresun/name/martin-schwalenberg-obituary?id=27557597

My systemic abuse is typical of what many Catholic officials promote and cover up in addition to their clergy sexual abuse: body shaming, school beatings, castration, obstetric torture (symphysiotomies and denied painkillers), forced pregnancies, forced adoptions, forced abortions, infanticide, unwed mother false imprisonment (Magdalene and Good Shepherd slave labor laundries), government coups (Hitler’s rise and Jan. 6), and genocide to impose sexual abstinence on us “sexually unworthy” millions, while excusing sex crimes and abortions by their own esteemed clergy. If authorities only investigate clergy sex crimes, they are setting us constituents up for more generations of abuse. The Vatican war on safe sex fuels its pedophile priest scourge by guaranteeing these priests unlimited unwanted fresh kids from dysfunctional homes. These underlying reproductive abuses are excellently summarized by Dr. Doris Reisinger:
https://www.mdpi.com/2077-1444/13/3/198/htm
https://en.doris-reisinger.de/theologie
https://en.wikipedia.org/wiki/Doris_Reisinger

The Catholic Church should be investigated not only for sexual dogma-based Munchausen by Proxy (MBP) medical torture of gays, intersex infants, rape victims, and maternity patients, but also for Nazi-like Cold War experiments in Catholic hospitals, schools, and orphanages that partnered with Johns Hopkins, other hospitals, the Pentagon, other government agencies, and pharmaceutical companies to exploit patients and children for involuntary radiation, biochemical, and drug experiments -- often for the vicious religious purpose of imposing abstinence on "sexually unworthy sinners" like unwed mothers, their fatherless kids, gays, the disabled, non-Catholics, and indigenous and other ethnic minorities. Abstinence-motivated medical assault like disfigurement, castration, female genital mutilation, and symphysiotomies are as heinous as sexual assault. Medically imposed abstinence is Vatican-approved eugenics.

https://blogs.lse.ac.uk/lsereviewofbooks/2015/01/19/against-their-will-the-secret-history-of-medical-experimentation-on-children-in-cold-war-america-by-judith-l-newman-gregory-j-dober-and-allen-m-hornblum/
https://www.amazon.com/Undue-Risk-Secret-Experiments-Humans-ebook/dp/B00CUFD690

Authorities should also investigate the ignored three dozen nun-run slave-labor and baby-trafficking Magdalene Laundry/Good Shepherd prisons in several states, including one in Baltimore. They might have mass graves like the ones discovered at indigenous residential schools, orphanages, and baby mills in Canada and Ireland.
https://www.prnewswire.com/news-releases/survivors-describe-rape-assaults-in-rare-look-at-us-magdalene-laundriesvideo-live-discussion-sponsored-by-janet-janet--suggs-llc-300972545.html
https://www.washingtonpost.com/world/2022/03/27/canada-residential-school-pope-francis-apology/
https://www.the-sun.com/news/388229/irelands-evil-mother-baby-homes-raped-abused/

Officials should realize that Trump fan rejection of covid vaccines is fueled by the unholy trinity of the pedophile priest war on safe sex science, legitimate fear of government experiments and defective drugs, and GOP MBP glee over covid killing mostly minorities. Yet after the vaccines proved safe, I got vaccinated even though I'm still disfigured by Johns Hopkins radiation "treatments" for Mom's priest-ordered abuse.

I was very offended when childless Pope Francis chewed out "selfish" couples for having pets instead of kids. His disfiguring abstinence cult made sure that I'd never attract anyone, therefore have kids. And why should impoverished, unhealthy or abuse-surviving couples breed for a wealthy pedophile priest-serving cult anyway?
https://www.cosmopolitan.com/lifestyle/a38686898/pope-francis-pets-kids-selfish/
https://www.inquirer.com/opinion/pope-francis-pets-catholic-selfish-20220106.html
https://www.washingtonpost.com/opinions/2022/01/07/pope-francis-pets-make-us-better-people-even-if-we-dont-have-children/?itid=lk_interstitial_manual_12

While deliberate medical harm flourished under the Nazis, Christian "sin-preventing" mutilation like castration and facial disfigurement actually date back to early saints inspired by St. Peter who kept his own daughter lame to keep her a virgin. Saints Ebba and Rose of Lima disfigured their own faces to remain virgins. So in addition to my MD and PA school nuns savagely beating learning-disabled kids, they also preached penitential self-mayhem, as depicted in movies like "The Da Vinci Code."
https://webcache.googleusercontent.com/search?q=cache:c-CposR-wJEJ:https://www.thedailybeast.com/why-did-saint-peter-paralyze-his-own-daughter+&cd=8&hl=en&ct=clnk&gl=us

MBP "Saint" Mother Teresa was outed by disgusted volunteers like Hemley Gonzalez as a sadistic money-laundering fraud who denied her captive patients all basic medical care just so they would suffer for the sins of the rich, while she flew their private jets to access the best care for herself. Similarly, abstinence bullies like playboy and pedophile priests and Natural Family Planning (NFP) teachers order childbirth-ruined mothers like my mom to sicken their unwanted

kids like me to extort years of abstinence from husbands threatening divorce over the contraception ban that these church reps themselves disobey. Irish hospitals justified forcing gruesome symphysiotomies on petite mothers to save them from “sinful contraceptive” c-sections that limited them to just four pregnancies instead of the expected ten to twenty. Symphysiotomies were likely performed in America too.
https://bigthink.com/articles/hemley-gonzalez-the-truth-about-mother-teresa/
https://www.businessinsider.com/afp-mother-teresas-legacy-under-cloud-as-sainthood-nears-2016-9
https://www.irishexaminer.com/news/spotlight/arid-40324274.html

Whistleblowers like the late former priest therapist Richard Sipe have complained about antiabortion priests who secretly force abortions on their mistresses and rape victims. Sipe knew of 50 such priest-forced abortions. In one of his books, he revealed that a priest castigated Sipe’s own mother for using “sinful” ineffective NFP even though she nearly died several times from her resulting ten pregnancies. Years ago, I called Sipe to relate my theory that the contraception ban forces unhealthy mothers to commit MBP abuse against unwanted kids, and he agreed in horror. https://www.latimes.com/archives/la-xpm-2002-jul-07-tm-46979-story.html

The media and Obama Administration inexcusably ignored the hypocrite Little Sisters of the Poor egregiously continuing their MBP war on insurance-covered contraception despite their very own knocked-up Sister Sosefina Amoa smothering her secret newborn at their DC mother house in 2013!
https://www.washingtonpost.com/local/crime/mother-convicted-of-killing-newborn-said-she-didnt-know-she-was-pregnant/2014/05/21/814636d6-dc82-11e3-8009-71de85b9c527_story.html

Centuries of brutal church hypocrisy mandated that Schwalenberg order my mom Ellen Mueller to disfigure me as her abstinence forever excuse to save herself from death by another pregnancy, divorce over no more sex, or damnation for contraception use. She exploited my mild hand rash from radioactive glow-in-the-dark rosaries by burning my entire body with caustic tub concoctions, then trafficking me for permanent x-ray and uv radiation burns by Pentagon-funded dermatologists at Johns Hopkins and Philly’s University of Pennsylvania Hospital. Such "treatments" turned me into a revolting molting red lobster that got me banned from schools, stores, restaurants, buses, family gatherings, ever marrying, and many jobs.

Mom bullied me into obeying by screaming that this torture would prevent my dad Phil Mueller from abandoning us. At the time, I thought her burning remedies simply meant that she was “stupid like Lucy Ricardo.” Only recently did I realize that my red skin also conveniently took Dad’s attention off his last inexplicably brown-skinned Asian-looking child resembling Mom’s other favorite priest, Father Thakalahara. God would forgive her because she martyred my skin and dignity in atonement. And I wouldn’t be surprised if Schwalenberg was also tied into the deadly Father Maskell teen sex ring revealed in *The Keepers* series.
https://en.wikipedia.org/wiki/The_Keepers

Dad also got in on the abuse by shunning me in public, helping his dad take insulting side show pics of my most burned parts, including my naked rear end, and ignoring Mom humiliating me with backyard naked winter sun baths, overdosing me on barbiturates, trying to amputate my arms, and making me bald. This abuse was witnessed by Towson neighbors like the Fields family. Years later, I and Doylestown, PA neighbor Bunny Tose (niece of Eagles owner Leonard Tose) separately caught him in adultery when we spotted him sneaking out of a notorious prostitution motel where our Catholic hot teen hooker neighbor Mary Lafferty later got arrested for servicing the sex-starved Our Lady of Mt. Carmel husbands of NFP fool wives.

When I discovered healing radiation detox steam showers, Mom threw apoplectic fits over “selfish” water wasting. She made every visitor and delivery man visit our laundry room so she could demand their pity over the relatively measly two hours she spent each week washing my greasy medicine-soaked clothes. She kept up this humiliating harassment even though my disobedient showers slowly cleared my skin and need for greasy medicine. She also relentlessly hounded everyone about my “clown” makeup, “quack” plastic surgeon consultations, and “mentally ill” all-nighter school assignments that boosted my grades. She even belittled my dignity when I refused to enter my burned skin in a local disability pageant.

When I declared feminist support of contraception, Mt. Carmel priests and nuns ordered her to keep me disfigured and doped on psychotropics -- not unlike Rosemary Kennedy's lobotomy punishment for "proof of fornication" leaves in her hair from clumsy convent prison escapes.

Last year, I complained to DC AG Carl Racine about dogma-based psychiatric drug and radiation experiments at Georgetown University. In early 1992, Mom arranged my consultation with Father Jon O’Brien, late GU Dean of Psychiatry, to drug me out of more plastic surgery for ongoing looksist job discrimination. Although I unwittingly described to O’Brien Mom’s classic MBP assaults that switched from physical to psychotropic abuse, he angrily bragged about developing those bad side-effect drugs and threw me out of his office. I later learned that those prescriptions intentionally muzzle us angry abuse survivors. During the Cold War, the CIA funded GU’s Dr. Charles Geschickter who farmed out radioactive isotopes and MK-Ultra mind control funds for sinister involuntary experiments around the country.
https://ahrp.org/dr-charles-geschickter-served-the-cia-both-as-researcher-and-funding-conduit/
https://www.washingtonpost.com/archive/politics/1977/08/06/mind-control-quartet-subpoenaed-by-senate-after-no-show/3029acae-91dd-4002-9115-d251cf74f294/
https://pelgranepress.com/2017/03/01/call-of-chicago-often-is-a-word-they-seldom-use/
https://www.washingtonpost.com/archive/politics/1977/08/04/turner-cites-149-drug-test-projects/ceb6e94f-25fd-451d-83a3-6533a7a3a7c3/
https://en.wikipedia.org/wiki/Operation_Midnight_Climax

Two psychiatrists twenty years apart (Dr. Rodriguez at JH and Dr. Lawrence Decker in Doylestown, PA) believed Mom caused my disfigurement, but since JH was also conducting horrific involuntary Tuskegee and Guatemala SDT and radiation experiments on unwitting adults and kids, my lab rat stage mother conveniently passed its child abuse investigation. Years later, my frantic anti-healing parents hired Decker to shame me out of using my job savings for fixing

my dad-broken nose and radiation-stunted chin. When I reluctantly met Decker, he almost immediately blurted: “Go get your surgery! Your mother is the awfulest, awfulest woman I ever met!” Later, we joked about how horrified my stupid toxic parents would be if they knew his specialty was encouraging sex lives for the disabled. They picked him on the recommendation of a lawyer they consulted to prevent my planned surgery. When I arrived at Haverford Hospital, my surgeon Dr. Julius Newman angrily told the staff that he was ready to sue my mother because she bullied every politician and medical license authority in PA to revoke his license. When Decker told me he believed Mom caused my scarring, I assumed he meant psychosomatically.

For years, I believed her rotten religiosity psychosomatically worsened my "genetic" hand rash until I learned about MBP abuse from the *Dr. Dean Edell Show* in October 1992. Months after my disastrous appointment with O’Brien, a damn TV talk show finally gave me a psychiatric name for Mom’s obsession with disfiguring me. After the show, I contacted guest Dr. Herbert Schreier, who urged me to read his book and contact his co-author Dr. Judith Libow for her study on adult survivors of MPB parents.
https://www.amazon.com/Hurting-Love-Munchausen-Proxy-Syndrome/dp/0898621216

By divine coincidence, a few days later, a DC suicide prevention counselor connected me to anti-nuclear activist Ann Hopkins, who was also facially disfigured by her MBP scientist dad's radiation experiments at Hanford. Together, we attended DC-area hearings of the Advisory Committee on Human Radiation Experiments (ACHRE), where we met dozens of child survivors like ourselves. Many were exploited by Catholic birth and adoptive military parents and orphanage nuns, and developed peeling burns like mine, and later died prematurely like Ann of resulting cancers. Some were certain that their military doctors included Paperclip Nazis. One shocking government handout revealed that radium-painted rosaries caused my initial mystery hand rash. Mom always knew the cause, but smugly hid the truth from me!
https://en.wikipedia.org/wiki/Advisory_Committee_on_Human_Radiation_Experiments

Controversial Canadian whistleblower Rev. Kevin Annett has complained about mass graves and Nazi-like government-funded experiments on indigenous kids at Catholic and other religious residential schools across Canada, along with experiments on Quebec orphans in nun-run asylums. I wouldn’t be surprised if US residential schools and orphanages also have secret mass graves like those in Canada and Ireland.
https://www.buzzsprout.com/1364944/10035642
https://en.wikipedia.org/wiki/Duplessis_Orphans
https://www.freedommag.org/english/canada/reports/page01.htm
https://thelinknewspaper.ca/article/the-order-of-grey-nuns-facilitated-child-kidnappings
https://knowledgenuts.com/2013/09/26/the-duplessis-orphans-20000-intentional-misdiagnoses/

I contacted JH and UP for my pediatric records, but JH archivist lawyer Keenan Crawford refused to send a copy of 1960-62 meeting minutes mentioning JH experiments unless I first signed a waiver promising not to sue. The Baltimore Sun had just revealed that JH stuffed radium up the noses of 67,000 students and fed radioactive iodine to Down Syndrome kids. He

NEVER sent me the waiver. The records I did receive didn't list government experiments. Other JH survivors got the same runaround. One of my UP dermatologists, the disgraced Dr. Albert Kligman, was outed in *Acres of Skin* for testing LSD, Agent Orange, toxic concentrations of retin-A, and hundreds of other chemicals on Holmesburg prisoners. He used undiluted retin-A to horrifically scab skin in an effort to create "radiation burn-proof hardened skin" for soldiers. He may have done that to me too.
https://www.baltimoresun.com/news/bs-xpm-1997-10-12-1997285020-story.html
https://www.amazon.com/Acres-Skin-Experiments-Holmesburg-Prison/dp/0415923360
https://www.thedp.com/article/2021/06/kligman-prison-experiments-petition-police-free-penn
https://www.prisonlegalnews.org/news/2013/nov/15/book-review-against-their-will-the-secret-history-of-medical-experimentation-on-children-in-cold-war-america
https://en.wikipedia.org/wiki/Albert_Kligman

I've never had access to Mom's JH abuse evaluation or the list of JH experiments, but suspect priests submitted letters defending her faith-based abuse, and that the Pentagon was war gaming radiation disfigurement of females to study their long term demoralizing effect on males in friendly and enemy nations, who would then shun them for reproduction, thus further reducing populations. When ACHRE held its first public hearing at the Mayflower Hotel, TV and press crews swarmed the ballroom as indignant Medical College of Virginia officials defended running a disturbing Pentagon experiment in which 68 paid subjects suffered a dime-sized heat lamp skin burn for testing treatments. The public outrage stunned me since those adult volunteers endured one tiny arm scar, whereas my head and entire body were involuntarily burned at age six for the egos of my mom, priests, and military contractors.
https://www.washingtonpost.com/archive/opinions/1994/07/03/no-burning-secrets/7cd82d0f-0512-4652-ac95-f4923f4353b5/
https://www.washingtonpost.com/archive/opinions/1994/06/19/burning-secrets/03042318-08f8-4ae2-b12a-8f3d70855860/

Former Peace Corp volunteer and Berkeley medical anthropologist Nancy Scheper-Hughes connected lack of contraception to high child "poverty deaths" by desperate MBP mothers in a Brazilian shanty town that she studied since 1964. After a liberal village priest allowed her to teach modern contraception, she happily discovered in later visits that the selective neglect passive infanticide rates of 36 -41% were stopped by smaller planned families. These mothers had been previously praising Jesus for "triaging their unwanted kids to make room for the wanted ones."
https://www.naturalhistorymag.com/features/282558/no-more-angel-babieshey-on-the-alto-do-cruzeiro

Compare that outcome to a Philly priest who wouldn't allow Marie Noe sterilization even though her infants kept "dying from SIDS." He should have been arrested along with her for abetting her ongoing "less sinful" MBP smothering "birth control" of at least eight, possibly nine of her ten dead kids (one stillborn).
https://www.goodreads.com/review/show/3641466378

Scheper-Hughes also recounted how she and her brother naively induced crucifixion stigmata-like irritations on their skin on holy days to impress their pious Catholic mother. But their antics were benign cosplay compared to my mom's abuse and the NFP birth control scam that pretends women's ovaries obey Vatican calendars, charts, and thermometers, thereby forcing millions to suffer grisly obstetric injuries and death, decades of abstinence, and the humiliation of brothel-outsourced angry husbands like my dad.
http://members.tranquility.net/~rwinkel/psych/MBPandNarcissism.pdf

The insulting pedophile priest junk science of NFP nearly killed the infamous anonymous excommunicated Phoenix mother who was saved by an emergency abortion at St. Joseph's Hospital in 2009. That fiasco could have been avoided if the hospital allowed her sterilization or real contraception after previous pregnancies nearly killed her. Instead, she was only allowed NFP that AGAIN immediately failed her. Studies show that many women ovulate more than once per month, thus leaving no safe sex days: https://www.nbcnews.com/id/wbna3076995
https://flo.health/getting-pregnant/trying-to-conceive/fertility/hyperovulation
https://www.newscientist.com/article/dn3927-women-can-ovulate-more-than-once-a-month/
https://www.npr.org/2010/05/21/127033375/sister-margaret-mcbride-dont-confess

No government would criminalize contraception, sterilization, and abortion on behalf of the Vatican if the media paid attention to the WW2 years of future "Saint" Paul VI, author of the deadly "pro-life" Humanae Vitae Encyclical that spread HIV with its condom ban. This "saint" funded the Nazi Ustasha monk-run death camps in Croatia that raped and slaughtered nearly a million non-Catholic Christian Serbs for their suspected contraception use.
https://www.artsjournal.com/herman/2006/01/following_the_rat_lines.html
https://swcjerusalem.org/oldsite/CROATIA_122-13.htm
https://www.dailykos.com/stories/2016/7/30/1554483/-Pope-Francis-at-Auschwitz-But-Not-Where-Catholics-Slaughtered-700-000-Serbs-Jews-and-Roma-in-WWII#comments

If authorities only investigate clergy sexual abuse, and ignore the bigger picture of these same perps also committing dogma-based MBP medical torture to impose the miserable abstinence they themselves won't practice, nations will continue suffering dysfunctional families, substance abuse, overpopulation unemployment poverty, human trafficking, pandemics, pollution, and democidal dictatorships that the Catholic Church sponsors to keep its crime racket going. The public health-menacing GOP attacks on masks and vaccines are no different than the pedophile priest war on life-saving safe sex.

Recently, I was shocked to learn that Baltimore's late Cardinal Gibbons and Saint Pope Pius X badgered our government to defend genocidal atrocities in Africa by Belgium Catholic pedophile King Leopold II from 1885 to 1908. Gibbons and Pius X tripped over each other to heap praise on Leopold's "humanitarian" pillaging of the Congo that resulted in five to fifteen million murders:

"Nor has the Vatican ever come to terms with its errors in bolstering Leopold's bloody regime. Church officials seemed more uncomfortable with his irregular sex life than his homicidal stewardship in Africa. Pius X found the tango craze and other expressions of modern

decadence more appalling than the victimization of the Congolese to which he refused to give any credence."
https://academichustler1975.wordpress.com/2016/03/24/the-defenders-of-king-leopold-ii-genocide-in-the-congo/

Because governments haven't held the Vatican accountable for its collusion with genociders, antiabortion fans of Donald Trump felt entitled to mob our Capitol to keep him in power "to restore morals." Too many Trump fans, with their eagerness to murder VP Pence and Speaker Pelosi, aren't that different from Leopold's hand- and foot-chopping ivory and rubber mercenaries, Hitler's brown shirts, or my mutilating mom. We came very close to a religious coup suffered by other nations, so ignoring seditious religious thugs is perilous. My sadistic family got holy orgasms by torturing me for decades, yet bystanders mostly excused them.

We Vatican and government medical torture victims deserve justice and compensation for these indefensible atrocities. While Guatemalan STD victims have filed a class action against JH, JH still hasn't been punished for its radiation experiments. I'm also wondering if Catholic clergy selected some Guatemalan child victims in pedphile rejection retaliation. Holmesburg prisoners also didn't have much luck against Dr. Kligman and UP. My corrective surgeries exceeded $100,000 and, to my family's sanctimonious delight, I'm still too ugly to get or keep jobs. It would help if federal and state statutes of limitation were lifted so we aging church and government torture victims could be compensated and become a category protected from job and public accommodation discrimination.

Clarence Thomas illegally denied me equal pay when he headed the EEOC because my scarred face offended his Catholic centerfold standards. Many operations later, looksist bullies at The Washington Times illegally fired me for the same reason after forcing me to work 80 hour weeks for 40 hours pay for several years. In both cases, I couldn't find any affordable lawyers to help me. What good are anti-discrimination laws if victims can't afford lawyers? Maryland state and local government agencies and courts could at least stop paying the seditious Moonie cult Washington Times for running their classified legal court notices, given its Jan. 6 sedition, wage theft, Social Security theft, rampant sexual harassment, and discrimination law violations. Why should Maryland taxpayers fund anti-American and anti-human rights disinformation by The Washington Times through its only money-making department?

Clergy abuse survivors should be asked how the contraception ban may have ruined their parents' marriages, thereby setting them up as vulnerable kids for predatory priests. Also, survivors should be asked if MBP abuse was encouraged to promote their own abstinence with dates and spouses. There won't be any children safe from sexual and medical trafficking until their mothers are safe from deadly clergy womb trafficking.

Mary Mueller
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TESTIMONY IN SUPPORT OF SB 686 (3).pdf
Uploaded by: Mary Mueller
Position: FWA

TESTIMONY IN SUPPORT OF SB 686
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations
(The Child Victims Act of 2023)
****SUPPORT****

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

FROM: Mary Mueller

DATE: February 23, 2023

I am Mary Mueller of Greenbelt, MD, and I strongly support SB 686 as it would restore decades of denied justice and restitution to us survivors of religious, public institution and family abuse.

Last fall, I sent to former Attorney General Brian Frosh my summary of Catholic sexual dogma-based Munchausen by Proxy (MBP) medical torture inflicted on me as a child, starting in 1960 in Towson. A copy is included here so you can see the importance of adding physical torture and related abuses in amendments. Late Orioles chaplain / Immaculate Conception Monsignor Martin Schwalenberg directed my childbirth-ruined mother to disfigure me as her abstinence-only birth control excuse and to distract my father from noticing that their last child was obviously fathered by a priest from India.

Decades of withheld records, lies, threats, mob bullying and collusion by my extended family, clergy in three states, and Pentagon-contract doctors at Johns Hopkins and University of PA hospitals prevented me from understanding for decades how and why I grew up hideously burned head to toe. My mom claimed I had a genetic skin disease from my dad, yet her toxic home concoctions combined with hospital experiments, including x-ray lamp burns, made it spread all over and persist for decades, not only so she could avoid death by more pregnancies, divorce over her now sexless marriage, or damnation for contraception, but also to keep me too ugly to ever need contraception myself. The public deserves to know that the same abstinence-enforcing Catholic Church that criminally protects hypocrite playboy and pedophile priests also secretly excuses priest-forced abortions while forcing imprisonment, disfigurement, disabilities and even death on lay women as prevention or punishment for their own sex lives.

My mom insisted that disfigurement was a blessing, and I knew from my five abusive Catholic schools in two states that her cruelty was dogma-driven, but I didn't learn until September 2019 from a Daily Beast article that the very first pope, St. Peter, was also the first recorded Munchausen by Proxy perp when he proudly demonstrated to followers his forcing lameness on his own daughter to keep her an unmarriageable lifelong virgin. This inspired centuries of "sin-preventing" mutilations like castration and facial disfigurement. Saints Ebba and Rose of

Lima disfigured their own faces to remain virgins, and involuntary anti-sex martyrdom persists today in Catholic hospitals that endanger rape, maternity, LGBT and pediatric patients with

deliberate dogma-based malpractice.
https://webcache.googleusercontent.com/search?q=cache:c-CposR-wJEJ:https://www.thedailybeast.com/why-did-saint-peter-paralyze-his-own-daughter+&cd=8&hl=en&ct=clnk&gl=us

Catholic medical torture includes MBP abuse of kids to extort Natural Family Planning abstinence from husbands, castration of Dutch boys who reported pedophile priests, ruinous obstetric symphysiotomies on petite Irish mothers to avoid safer but "contraceptive" c-sections, forced pregnancies, forced adoptions, forced abortions on priests' mistresses, denied cancer treatments for pregnant women, denied HIV drugs for gays, and forced skin-burning HIV drug experiments on uninfected kids of single mothers at Incarnation Children's Center in Harlem.
https://www.theguardian.com/commentisfree/belief/2012/mar/20/forcible-castrations-dutch-catholic-church
https://www.altheal.org/toxicity/house.htm

While most Catholic school students have witnessed brutal school beatings, I had to research for decades to learn about nuns trafficking orphans for Nazi-like medical experiments, committing infanticide and abortions to hide their own pregnancies, and falsely imprisoning unwed mothers at Baltimore's Good Shepherd Home for unpaid forced labor. Such crimes also deserve inclusion in this bill as amendments. The colluding ob/gyn whom Father Maskell took his rape victims to matches the reproductive abuses researched by raped former nun Dr. Doris Reisinger.
https://www.mdpi.com/2077-1444/13/3/198

Former Peace Corp volunteer and Berkeley medical anthropologist Nancy Scheper-Hughes connected the lack of contraception to high child "poverty deaths" by desperate MBP mothers in a Brazilian shanty town that she studied since 1964. After a liberal village priest allowed her to teach modern contraception, she happily discovered in later visits that the selective neglect passive infanticide rates of 36-41% were stopped by smaller planned families. These mothers previously praised Jesus for "triaging their unwanted kids to make room for the wanted ones."
https://www.naturalhistorymag.com/features/282558/no-more-angel-babieshey-on-the-alto-do-cruzeiro

Compare that outcome to a Philly priest who wouldn't allow Marie Noe sterilization even though her infants kept "dying from SIDS." He should have been arrested along with her for abetting her ongoing "less sinful" MBP smothering "birth control" of at least eight, possibly nine of her ten dead kids (one stillborn). https://www.goodreads.com/review/show/3641466378

We survivors of childhood sexual, physical and medical abuse deserve restitution for our injuries, so I respectfully urge a favorable with amendments report on SB 686, and hope that you add my suggested categories by amendment. Thank you for reconsidering this bill.

ATRA SB686 2023 Maryland Senate Judicial Proceedin

Uploaded by: Cary Silverman

Position: UNF

S.B. 686
A BILL THAT WOULD RETROACTIVELY ELIMINATE A STATUTE OF LIMITATIONS AND REVIVE TIME-BARRED CLAIMS

TESTIMONY OF CARY SILVERMAN
ON BEHALF OF THE AMERICAN TORT REFORM ASSOCIATION

BEFORE THE MARYLAND
SENATE JUDICIAL PROCEEDINGS COMMITTEE

FEBRUARY 23, 2023

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to express our concerns regarding S.B. 686, which proposes to retroactively remove any time limit to commence a civil action seeking damages for injuries stemming from alleged childhood sexual abuse.

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 serve as an adjunct law professor. 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. I have testified across the country on bills similar to S.B. 686, including on earlier Maryland legislation. Last month, this Committee invited me to participate in a briefing on this issue. My testimony today is consistent with the concerns ATRA shared earlier.

Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims. ATRA commends the Committee for considering steps to protect children and help survivors of abuse. My testimony today focuses on general principles underlying statutes of limitations, as well as the reasons why retroactive changes to these 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. ATRA is concerned because S.B. 686 strays from these principles by proposing to retroactively eliminate any limitations period. It would set a troubling precedent for other types of civil cases.

Statutes of Limitations: An Overview

Why do we have statutes of limitations? By encouraging claims to be filed promptly, statutes of limitations help judges and juries decide cases based on the best evidence available. They allow courts to evaluate liability (in negligence cases, what a person or organization should have done to fulfill its duty of care) when witnesses can testify, when records and other evidence is available, and when memories are fresh. As

the U.S. Supreme Court has recognized, "the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise."[1]

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, in Maryland:

- 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.[2]

- 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.[3]

- Lawsuits alleging harm due to a doctor's carelessness must be filed within the earlier of five years of the injury or three years of discovery of the injury.[4]

- 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.[5]

Yet, in Maryland, lawsuits over promissory notes and contracts under seal can be brought for twelve years,[6] and lawsuits seeking recovery of land can be filed for twenty years.[7]

What these examples show is that the length of a statute of limitations is <u>not</u> typically based on the severity of the injury or the heinousness of the conduct at issue. The length of time to file a claim typically reflects the nature of the evidence that is necessary to decide a claim. Claims involving hard evidence such as recorded documents or land tend to have longer statutes of limitations. Cases involving standards of care that heavily rely on witness testimony to determine what occurred or should have been done tend to have shorter periods to file a claim.

In addition to helping courts and juries reach accurate decisions and safeguarding due process, statutes of limitations also allow businesses and nonprofit

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[1] *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

[2] Md. Code, Ct. & Jud. Proc. § 5-101.

[3] *See id.* § 3-904(g).

[4] *Id.* § 5-109(a).

[5] *Id.*

[6] *Id.* § 5-102(a).

[7] *Id.* § 5-103(a).

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 ordinarily a three or five-year period provides claimants in civil 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 generally does not begin until he or she becomes an adult (age 18).[8]

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 survivors with seven years to file claims after becoming an adult.[9]

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

- Provides 20 years for survivors 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 survivor of abuse becomes an adult, evidence must show that the organization was grossly negligent in how it acted or failed to act.
- A survivor 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.[10]

The General Assembly did not revive time-barred claims in 2003 or 2017. 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 Proposed Legislation

S.B. 686 proposes to eliminate Maryland's special statute of limitations for childhood sexual abuse claims entirely. It provides that a lawsuit could be filed "at any time," which will apply "retroactively to revive any action that was barred by the

[8] *Id.* § 5-201.

[9] S.B. 68 (Md. 2003) (amending Md. Cts. & Jud. Proc. Code § 5-117).

[10] H.B. 642 (Md. 2017) (amending Md. Cts. & Jud. Proc. Code § 5-117).

application of the period of limitations applicable before October 1, 2023." This bill will allow claims based on allegations of negligent conduct that occurred 2017 or 1947. Maryland has never taken such an extraordinary approach for any type of civil claim.

It is critical to recognize that S.B. 686 does not distinguish between lawsuits filed against perpetrators that committed the abuse and organizations that are alleged to have failed to prevent it. In addition to nonprofit organizations and businesses, the bill would revive claims against public schools and other public entities such as those that offer recreational, social services, or juvenile justice programs.

Accordingly, S.B. 686 would allow claims against public and private organizations based purely on negligence, meaning a lawsuit only needs to assert that an organization should have taken additional steps to detect, avoid, or stop abuse many years ago, or should have had better practices for hiring or supervising employees or volunteers. These lawsuits do *not* need to show that an organization knew of the abuse and allowed, enabled, or concealed it. In many cases, the perpetrator will be dead. In some cases, lawsuits will claim that an organization failed to take adequate steps in the 1950s or 1960s to protect the safety of the victim.

The bill also eliminates a current requirement that in actions filed seven or more years after a survivor turns 18, when evidence may have already been lost, that a plaintiff show that an organization or government entity was grossly negligent in failing to protect a person from abuse.

Actions that are currently not viable but that the bill revives would be subject to damage limits. For public entities, such as county boards of education, the bill limits damages to $850,000 to a single claimant for injuries arising from a single incident or occurrence, which about double the existing $400,000 cap that applies to public entities facing tort claims. For private entities, including nonprofit organizations, the bill provides that damages may not exceed $1.5 million for injuries arising from a single incident or occurrence. This limit may provide some predictability and reduce the potential for "nuclear" verdicts in decades-old cases, but the bill sets the limit at a level that exceeds the average settlement or judgment in these cases.[11] As such, the cap will likely function as a level personal injury attorneys demand to settle each revived case.

Retroactively Discarding a Statute of Limitations is Particularly Problematic for Businesses and Nonprofit Organizations

As discussed earlier, under Maryland law, every type of civil claim, no matter serious or tragic the injury, no matter how horrific the conduct, is subject to a finite statute of limitations. No plaintiffs' lawyer wants to have to tell an injured person, who is seeking help, that it is too late to sue. But finite statutes of limitations are a core part of the civil justice system. They promote accuracy in determining liability. And they

[11] For example, when considering the fiscal implications of similar legislation in Washington, that state's Office of the Attorney General indicated that the average state payout on a childhood sexual abuse case against public entities (where there is no cap on public entity liability) is about $1.2 million. *See* Multiple Agency Fiscal Note, Bill No. 1618 S. H.B. (Feb. 15, 2023).

provide predictability to businesses and other organizations that, at some known point, their liability exposure ends.

While eliminating a statute of limitations is problematic, the retroactivity of the legislation significantly exacerbates this concern. At least when a statute of limitations is extended or eliminated prospectively, organizations can make rational and appropriate decisions to reduce their liability exposure and to be prepared if some day they are sued. If a business or nonprofit organization knows that Maryland has eliminated its statute of limitations for a particular claim *going forward* it can:

- Adopt a record retention policy that keeps employment or other relevant records forever rather than discard them after a certain number of years.

- Meticulously document steps it takes in the area in which it is subject to liability exposure, such as how it made hiring, disciplinary, and termination decisions, received and responded to reports of misconduct, any training it required employees or volunteers to undertake, and how it met the best practices at the time.

- Understanding the extraordinary liability exposure in a particular area, a person or organization can decide simply to not go into that line of business – not to offer a service or a product – because the risks are just too high. Or they may enter that line of business, but do so only if they are able to purchase substantial additional insurance to provide some security from that risk.

- In a similar vein, when a statute of limitations is extended prospectively, a business that is considering acquiring another business can do due diligence to investigate whether the company it is considering acquiring ever operated in an area subject to such extraordinary liability exposure and go back as far as the statute of limitations allows.

When a legislature eliminates a statute of limitations retroactively, however, a person or organization does not have these choices. Consider, for example:

- An organization, such as a YMCA, is sued for abuse that an employee allegedly committed fifty years earlier when the perpetrator died one year before the lawsuit was filed, any employment records were discarded after seven years, and the few staff members of that time who are still alive have little memory of either of them.

- A dentist or doctor who took over the family medical practice is served with a revived lawsuit alleging that her father or grandfather abused a patient. This may have occurred even before the current owner of the practice was born or went to medical school.

- A small business that provided exercise or sports programs to elementary schools is sued because an employee, who worked at the organization for just a few months, is accused of abuse thirty years earlier. The person who founded, owned, and managed the business at that time has long retired and moved away and the current owners have no knowledge of what occurred.

Reviving time-barred claims is also likely to result in a sudden surge of unexpected litigation. Even if an organization has the records, witnesses, institutional knowledge available to defend itself, it will be challenging to respond to the litigation when facing multiple, decades-old cases at the same time.

This Approach Sets a Troubling Precedent

Discarding a statute of limitations and reviving-time barred claims sets a troubling precedent. Over time, there will be many sympathetic plaintiffs, important causes, and unpopular industries and defendants. There are also other past injustices that have not been remedied. Allowing revival of time-barred claims here will inevitably lead to future calls to permit claims asserting injuries based on conduct that occurred decades ago to proceed in Maryland's courts.

ATRA has already observed several such attempts in other states. For example, efforts are underway in states that have revived time-barred childhood sexual abuse claims to expand these provisions. Legislation recently took effect in New York that revives claims brought by those who allege injuries from sexual abuse as adults.[12] California enacted similar legislation reviving claims against entities alleging damages from sexual assault experienced as adults, adding related employment claims.[13] Vermont almost immediately expanded its 2019 childhood sexual abuse claims-revival law to apply to *physical* abuse claims.[14] Now, Vermont is considering legislation that would further extend this reviver to "emotional abuse" claims.[15]

Plaintiffs' lawyers and advocacy groups will also seek to revive other types of tort claims. For example, legislation proposed in Maine would have retroactively expanded the statute of limitations for product liability claims from six to fifteen years.[16] Oregon considered a bill that would have revived time-barred asbestos claims during a two-year window.[17] Last October, New York revived claims by water suppliers alleging injuries related to an "emerging contaminant."[18]

States have also considered proposals to retroactively allow lawsuits alleging novel theories of liability. Bills have attempted to allow claims addressing social and political causes by applying today's moral values to conduct that occurred long ago. For

[12] S. 66 (N.Y. 2022).

[13] A.B. 2777 (Cal. 2022). As introduced, the California legislation would have broadly revived claims seeking to recover damages for "inappropriate conduct, communication, or activity of a sexual nature." A.B. 2777 (Cal., introduced Feb. 18, 2022).

[14] S. 99 (Vt. 2021).

[15] H. 8 (Vt., introduced Jan. 5, 2023).

[16] LD 250 (Maine 2019) (reported "ought not to pass").

[17] S.B. 623 (Or. 2011) (died in committee).

[18] S. 8763A (N.Y. 2022).

example, legislation has been introduced to revive lawsuits alleging that businesses are responsible for climate change[19] or to address human rights abuses of the past.[20]

ATRA's concern is that opening the door here sets a precedent that will be used in other areas. If the legislature is willing to discard statutes of limitations, individuals and businesses in Maryland will face a risk of indefinite liability for any type of claim. As discussed earlier, taking this approach makes the civil justice system unpredictable, unreliable, and unfair.

Most States Have Not Taken the Extreme Approach Proposed in H.B. 1618

Over the past two decades or so, state legislatures have considered hundreds of bills to lengthen the statute of limitations for civil claims alleging injuries from childhood sexual abuse. Most legislatures have responded by prospectively increasing the statute of limitations, even if a bill started out with a more extreme approach. They have retained finite limits and decided not to revive time-barred claims. Here are some recent examples:

- Alabama, one of the few states that had no special statute of limitations for childhood sexual abuse claims, prospectively established a statute of limitations for childhood sexual abuse requiring claims to be filed by age 25.[21]

- 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.[22]

- Texas prospectively extended the statute of limitations from 15 years to 30 years of majority (age 48).[23]

In fact, last week, North Dakota's Senate Judiciary Committee, which was considering legislation similar to S.B. 686, amended the bill to eliminate an open-ended reviver and, instead, prospectively apply an extended, finite statute of limitations.[24]

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[19] S.B. 1161 (Cal. 2016) (proposing to revive actions under the state's unfair competition law alleging that businesses deceived, confused, or misled the public on the risks of climate change or financially supported activities that did so) (reported favorably from committee, but died without floor vote).

[20] A.B. 15 (Cal., as amended Mar. 26, 2015) (proposing a ten-year statute of limitations for torts involving certain human rights abuses that would have applied retroactively to revive time-barred claims for events that occurred up to 115 years earlier) (claims-revival provision removed and legislation made prospective before enactment).

[21] S.B. 11 (Ala. 2019) (to be codified at Ala. Code Ann. § 6-2-8(b)).

[22] H.B. 565 (Tenn. 2019).

[23] H.B. 3809 (Tex. 2019).

[24] S.B. 2282 (N.D. 2023) (as amended by the Senate Judiciary Committee on Feb. 15, 2023 to require claims to be filed within 21 years the abuse or 21 years of age 15, which unanimously passed the Senate on Feb. 16, 2023).

By our count, 24 states and the District of Columbia have revived childhood sexual abuse claims in some form since California did so in 2002. It is important for the Committee to recognize, however, that few of these states adopted the broad, unbounded type of reviver contained in S.B. 686. Most other states placed significant constraints on the claims that they revived.

Three states limited revivers to the perpetrator of the abuse, recognizing the problems with evaluating negligence after decades have passed. By contrast, intentional tort claims involve crimes with the simple question of whether the defendant committed the abuse or not.

- 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 or 7 years of discovery of the injury in 2014. The new period applied retroactively to revive time-barred claims against perpetrators only.[25] Massachusetts also has a low cap on damages in civil claims against charitable organizations.

- Georgia extended its statute of limitations to age 23 or 2 years of discovery and enacted a 2-year window reviving time-barred claims against perpetrators only in 2015.[26]

- Rhode Island extended its statute of limitations for childhood sexual abuse cases from 7 years to 35 years of turning 18, and provided 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.[27]

Several other states required revived claims against an entity to show the entity had actual knowledge or committed criminal misconduct.

- In 2009, Oregon extended its statute of limitations 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.

- Utah adopted a statute of limitations that allows claims to be filed within 35 years of turning 18 and enacted a 3-year window for claims against

[25] 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.

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

[27] S.B. 315 Sub. A (R.I. 2019) (amending R.I. Gen. Laws § 9-1-51).

perpetrators and those who would be criminally responsible in 2016.[28] The Utah Supreme Court found that reviver unconstitutional in 2020.

- 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.[29]

- Arizona extended its statute of limitations to 12 years of age 18 in 2019. 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.[30]

- West Virginia adopted a statute of limitations of 18 years of becoming an adult or four years of discovery of the abuse, for claims against perpetrators, in 2020. For claims against entities, it adopted an 18-year period (age 36) without the potential to expand that period for later discovery of the injury. It revived claims against perpetrators or a person or entity that aided, abetted, or concealed the abuse.[31]

Three states did not revive claims alleging bare negligence, but required evidence of gross negligence to support a time-barred claim. These states include Delaware (2007), Hawaii (2012-2020), and Vermont (2019).[32]

In addition, several states revived only those claims falling within a new or extended, but finite, statute of limitations by applying the extended period retroactively. These states include Connecticut (2002), Kentucky (2021), Montana (2019), Nevada (2021), Oregon (2009), and West Virginia (2020), as well as the District of Columbia (2019). They did not revive claims going back indefinitely.

Finally, Colorado's 2021 law retroactively authorized a cause of action involving conduct that occurred after 1960 and capped damages in otherwise time-barred negligence claims against organizations and public entities at levels significantly lower than those proposed in S.B. 686.[33]

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[28] 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").

[29] 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 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 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.

[30] H.B. 2466 (Ariz. 2019) (codified at Ariz. Rev. Stat. § 12-514).

[31] H.B. 4559 (2020) (amending W. Va. Code Ann. § 55-2-15).

[32] Del. Code tit. 10, § 8145(b); Haw. Rev. Stat. § 657-1.8(b); Vt. Stat. Ann. tit. 12, § 522.

[33] S.B. 88 (Colo. 2021) (codified at Colo. Rev. Stat. § 13-20-1201 et seq.) (generally limiting damages to $350,000 against public entities and $500,000 against private entities).

In sum, while you may hear that many states have revived time-barred childhood sexual abuse claims, relatively few states, such as California, New York, New Jersey and Minnesota, have broadly done so. When you look more closely at what other states actually did, the vast majority included significant constraints on what claims are revived that are not found in S.B. 686.

Reviving Time-Barred Claims is Unconstitutional

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."[34]

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.[35] "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.[36] 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 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.[37] 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 S.B. 686's reviver unconstitutional.

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[34] *Dua v. Comcast Cable*, 805 A.2d 1061, 1078 (Md. 2002) (emphasis added); *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.").

[35] *Doe v. Roe*, 20 A.3d 787, 800 (Md. 2011).

[36] *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).

[37] *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).

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 in 2003, 2019, and 2021. In 2003 and initially in 2019, Assistant Attorney General Kathryn Rowe concluded that it is "possible" that the Court of would find legislation reviving time-barred claims violates the due process requirements of the Maryland Constitution.[38] The earlier opinions hedged for two reasons – (1) it took a cautious approach in not stating with certainty that the reviver would be unconstitutional because, while recognizing the clear language in past rulings indicated the high court would not allow a reviver, the court had not squarely ruled on the issue; and (2) it recognized that courts in some states (a minority) had permitted revivers.

After the statute of repose language was added to the statute in 2017, the opinion letters became more definitive. The March 16, 2019 opinion letter concludes that reviving time-barred claims would "most likely be found unconstitutional as interfering with vested rights."[39] The June 23, 2021 opinion letter to Chairman Smith similarly concluded: "I find it unlikely that a court would find a change in the law creating a new two year during which a person would be once again liable to be sued did not violate the vested right created by the passage of the statute of repose."[40]

Regardless of whether the period for filing a claim is considered a statute of limitations or a statute of repose, 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. [41] 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. These cases generally recognize that a legislature cannot take away vested rights. It is a principle that is equally important to plaintiffs and

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[38] *See* Kathryn M. Rowe, Assistant Attorney General to The Hon. Luke Clippinger, regarding H.B. 687, Mar. 12, 2019 (citing 2003 letter).

[39] Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. Kathleen M. Dumais regarding H.B. 687, Mar. 16, 2019.

[40] Letter from Kathryn M. Rowe, Assistant Attorney General to The Hon. William C. Smith, Jr. regarding S.B. 134 and H.B. 263 of 2021, June 23, 2021.

[41] *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.").

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,[42] including retroactive revival of time-barred criminal prosecutions,[43] but does not provide a similar prohibition against retroactive laws affecting *civil* claims.[44] 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.[45] Delaware, for example, follows the federal approach.[46] The U.S. Supreme Court has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution.[47] Many states, including Maryland, do so.

In 2020, the Utah Supreme Court became the latest state high court to find reviver legislation (a three-year window that revived claims only against perpetrators) unconstitutional. While the court "appreciated the moral impulse and substantial public policy justifications" for the reviver, the court unanimously held that the principle that the legislature violates due process by retroactively reviving a time-barred claim is "well-rooted in our precedent," "confirmed by the extensive historical material," and has been repeatedly reaffirmed for "over a century." It continued to follow the "majority approach."[48]

By our count, 15 of the 24 states that have revived time-barred childhood sexual abuse claims did so between 2019 and 2021. Litigation stemming from these recent enactments is now reaching state appellate courts. ATRA is aware of constitutional challenges to revivers in five states: Colorado, Louisiana, North Carolina, New York, and

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[42] U.S. Const. art. I, § 9, cl. 3 ("No bill of attainder or ex post facto Law shall be passed.").

[43] *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").

[44] 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.").

[45] *See Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); *Campbell v. Holt*, 115 U.S. 620, 628 (1885).

[46] *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*).

[47] *See Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

[48] *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020).

Rhode Island. In the Colorado case, for example, organizations representing school districts questioned how they could defend against a claim dating back to the 1980s when the then 30-year-old employee accused of abuse would now be 80, and the school district had difficulty even locating records to confirm he was an employee 40 years ago, let alone determine what interaction he may have had with the plaintiff. The school districts also indicated that they are unlikely to have records from that period given they did not have any reason to save records forever and their retention period reflected the statute of limitations in place at the time and available storage space.[49] Maryland schools and other organizations will have similar due process issues when responding to decades-old claims. ATRA anticipates that courts will ultimately invalidate some, if not all, of the reviver provisions in states that have disregarded their constitutional principles.[50]

* * *

In conclusion, 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 retroactively removes any limitations period 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. The General Assembly significantly extended the civil statute of limitations for childhood sexual abuse in 2017. If, however, the Committee feels that more time is needed, there are alternatives that would provide survivors 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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[49] Brief of Amici Curiae Colorado School Districts Self Insurance Pool, Colorado Association of School Boards, Special District Association of Colorado, Colorado Rural Schools Alliance, and Colorado Association of School Executives in Support of Petitioner Aurora Public Schools, *Aurora Public Schools v. Saupe*, No. 2022 SC 824 (Colo. filed Jan. 17, 2023).

[50] *Lousteau v. Congregation of Holy Cross Southern Province, Inc.*, No. 22-30407 (5th Cir.) (considering appeal of ruling finding Louisiana's reviver unconstitutional); *Doe v. Society of the Roman Catholic Church of the Diocese of Lafayette*, No. 2022-CC-00829, 347 So.3d 148 (Mem) (La. Oct. 4, 2022) (remanding to Court of Appeals with instruction to consider whether reviving a time-barred claim would "unconstitutionally impair relator's vested right in the defense of liberative prescription"); *PB-36 Doe v. Niagara Falls City Sch. Dist.*, CA 21-01223 (N.Y. App. Div., 4th Dep't) (briefing complete); *McKinney v. Goins*, No. 109PA22 (N.C.) (considering appeal of ruling finding reviver unconstitutional); *Houllahan v. Gelineau*, SU-2021-0032-A, SU-2021-0033-A, SU-2021-0041-A (R.I.) (oral argument heard Feb. 1, 2023, in case in which trial court did not reach constitutional issue).

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MARYLAND CATHOLIC CONFERENCE

February 23, 2023

Senate Bill 686 - Civil Actions – Child Sexual Abuse –
Definition, Damages, and Statute of Limitations (The Childs Victim Act 2023)

Senate Judicial Proceedings Committee

UNFAVORABLE

The Maryland Catholic Conference is the public policy representative of the three (arch)dioceses serving Maryland, which together encompass over one million Marylanders. Statewide, their parishes, schools, hospitals, and numerous charities combine to form our state's second largest social service provider network, behind only our state government.

At the outset, we wish to acknowledge the tremendously painful and emotional nature of the issue of child sexual abuse, the courage of the survivors of sexual abuse who advocate for changes in the law regarding the civil statute of limitations for cases involving child sexual abuse, and our sorrow for all those who have suffered through contact with anyone involved with the Catholic Church.

We are, however, compelled to oppose the current version of the legislation before you, specifically the unconstitutional provision that seeks to open an unlimited retroactive "window" allowing civil cases of child sexual abuse to be brought forward, regardless of how long ago the alleged incidents occurred.

We have noted in connection with past legislation that eliminating the civil statute of limitations retroactively raises serious equity concerns and is particularly unnecessary in Maryland, which does not have a criminal statute of limitations for cases of child sexual abuse. Maryland is one of few states that have no statute of limitations for felonies, and thus perpetrators of sexual abuse can be held accountable, and victims can have their day in court at any time until the death of the perpetrator, regardless of how long ago the sexual abuse occurred.

Additionally, the Maryland-serving dioceses have provided millions of dollars in therapeutic counseling assistance and in direct financial payments to victims as part of their ongoing commitment to contributing to the healing of victim-survivors.

While there is clearly no financial compensation that can ever rectify the harm done to a survivor of sexual abuse, the devastating impact that the retroactive window provision will potentially have by exposing public and private institutions - and the communities they serve - to unsubstantiated claims of abuse, cannot be ignored.

We further find it unacceptable that the bill, as currently drafted, exposes private institutions to far greater financial lability than it does public ones, which enjoy numerous protections, including a damages cap nearly 50 percent lower than the cap on damages that can be recovered in cases of abuse in private institutions.

Multiple times in the past, the Catholic Church in Maryland has supported efforts to extend the age by which victim-survivors may file civil suits. As a result, Maryland has, over the years, extended the age, most recently doing so in 2017. Currently, the law in Maryland allows victims until the age of 38 to file such claims; an extension supported by the church. The MCC has been vocal in its support of prospective legislation concerning this issue given the fact that that legislation seeking to retroactively revive claims currently time-barred in Maryland is unconstitutional, as noted in several Attorney General opinions.

We urge you to consider this legislation in light of the issues we have outlined here, and to give Senate Bill 686 an unfavorable report, in its current form.

SB0686_DHS_INFO.pdf
Uploaded by: Rachel Sledge
Position: INFO

Date: February 23, 2023

Bill number: SB0686

Committee: Judicial Proceedings Committee

Bill title: **Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)**

DHS Position: **LETTER OF INFORMATION**

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide written information for Senate Bill 686 (SB 686).

Senate Bill 686 would alter the definition of "sexual abuse," as it relates to civil actions for child sexual abuse. This bill would remove the statute of limitations in certain civil actions relating to child sexual abuse. This includes the removal of many of the limitations to governmental liability currently in law.

Under the existing law regarding civil liability, the statute of limitations for suits brought against a person or governmental entity that is not the alleged perpetrator of the abuse is 7 years after a victim of sexual abuse reaches the age of majority. The 7 year limitation is in effect unless all three of the following components are present: a person or governmental entity was found to have owed a duty of care to the victim, have employed or exercised some degree of responsibility or control over the alleged perpetrator, and engaged in gross negligence. The proposed bill strikes the 7 year limitation and allows an individual to seek damages at any time without proving gross negligence.

The U.S. Congress and nearly half of all states have either eliminated the statute of limitations for civil claims arising from childhood sexual assault or have expanded the statute of limitations to be linked to a specific number of years following an adult gaining knowledge of sexual abuse experienced as a child. There is a growing recognition of the long-term impact/trauma caused by child sexual abuse, and research demonstrates that child victims of sexual abuse frequently do not report the abuse they have suffered until they are much older.[1] Most of these laws have been passed within the last four years and the long-term impact has yet to be made clear.

Although a person seeking damages would still need to prove all elements of the claim if Senate Bill 686 is enacted, individuals making sexual abuse allegations may seek damages against individuals or governmental entities who were not directly involved in an abusive incident and may or may not have direct knowledge of the abuse at any time. For suits filed many years after the alleged incident, DHS's local departments of social services may no longer have access to certain witnesses or to records subject to expungement necessary to defend against such suits.

[1] *Prince George's County Dep't of Soc. Servs. v. Taharaka*, 254 Md. App. 155, 176 & n.14 (2022)

DHS has an obligation to serve the most at-risk populations in our communities while also providing support and peace of mind to placement agencies and resource parents who willingly take on the liabilities associated with serving at-risk youth. Our mission at DHS can only be achieved with their support and participation. Senate Bill 686 has the potential to undermine resource parent and placement agency confidence and reduce participation by making the risk of liability too great to continue partnering with our agency. DHS staff see first hand the impact of sexual abuse on individuals as staff work diligently to provide services and resources to children and families after experiencing these devastating events.

The Department appreciates the opportunity to provide the aforementioned information to the Committee for consideration during your deliberations. DHS welcomes continued collaboration with the Committee on Senate Bill 686.

SB0686-JPR_MACo_LOI.pdf
Uploaded by: Sarah Sample
Position: INFO

MARYLAND Association of COUNTIES

Senate Bill 686

Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

MACo Position: **LETTER OF INFORMATION**

To: Judicial Proceedings Committee

Date: February 23, 2023

From: Sarah Sample

The Maryland Association of Counties (MACo) takes no position on SB 686 but raises the following thoughts for the Committee's consideration on the potential county impacts of this bill. In brief, SB 686 attempts to address some of the grievous harms visited upon the victims of child sexual abuse. It expands the definition of "sexual abuse" and extends the statutes of limitations and repose for certain civil actions relating to child sexual abuse. If the bill becomes law, it will eliminate the statute of limitations on matters involving allegations of child sexual abuse.

Generally, if a local government is found to have been negligent in their supervisory capacity of an employee who perpetrated an offense outlined in the bill while operating outside the scope of their duties, there is potential for claims and coverage costs to increase. If the number of claims alleging sexual abuse by employees of local governments increases, the impact will be felt by all local governments – even those without a negative claim history – as the insurance premiums will likely increase. Given the uncertainty on the number of potential claims, the premium increases and risk to member equity cannot be reliably predicted at this time. Additionally, as premiums are assessed based upon actuarial studies, the increase in the statutory cap and the expansion of the limitations period could erode the accumulated surpluses maintained to satisfy existing claims and those future claims that can be reasonably anticipated.

Another element to consider is that SB 686 appears to eliminate the notice provisions of the Local Government Tort Claims Act for cases of child sexual abuse. Not requiring notice deprives a local government of the opportunity to conduct a timely investigation into any cases affected by this revision. Not having that opportunity complicates the defense of these

matters, including the possibility of settlement. As an example, parks and recreation departments are frequently staffed with seasonal employees, high school and college aged individuals, and/or employees that don't remain employees for long periods of time. The ability to locate and interview potential witnesses further complicates the ability of local governments to investigate.

Counties believe measures should be taken to ensure that victims of child sexual abuse can seek the justice their circumstances deserve. The bill expands the opportunity for victims to do so and also increases the potential for counties to incur increased cost and liability. Counties are appreciative of the goal of this legislation and are more than willing to work with stakeholders to further the intent while maintaining effective governmental operations and budgetary obligations.

SB0686 - MSBA Informational Letter (2023.02.23).do
Uploaded by: Shaoli Katana
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MEMORANDUM

To: Members of the Senate Judicial Proceedings Committee

From: Maryland State Bar Association (MSBA)
Shaoli Katana, Esq., Advocacy Director

Subject: Senate Bill 686 - Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023)

Date: February 23, 2023

Position: Informational Letter

The Maryland State Bar Association (MSBA) provides this informational letter for **Senate Bill 686 - Civil Actions - Child Sexual Abuse - Definition, Damages, and Statute of Limitations (The Child Victims Act of 2023).** SB 686 alters the definition of "sexual abuse" for purposes relating to civil actions for child sexual abuse to include any act that involves an adult allowing or encouraging a child to engage in certain activities; repeals the statute of limitations in certain civil actions relating to child sexual abuse; repeals a statute of repose for certain civil actions relating to child sexual abuse; provides for the retroactive application of the Act under certain circumstances; etc.

The MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

The MSBA strongly support the goals of the bill and is extremely sympathetic to child sexual abuse survivors seeking relief, to find justice and achieve some closure on their

abuse through open access to the civil justice system and appropriate remedies. The MSBA thanks the Legislature for its continued diligence and dialogue on this issue.

The proposed bill raises constitutional issues, particularly regarding the ability to revive civil claims after the statute of limitations has already ended. The State Bar has concerns about retroactive legislation that may diminish due process and encourages the Committee to consider additional solutions. The MSBA hopes that survivors can achieve meaningful reform without facing further legal challenges in court regarding the validity of this approach.

For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.