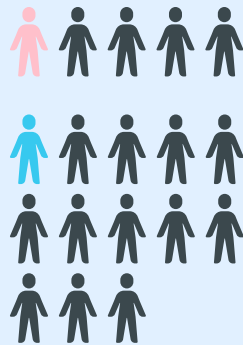


CHILD SEX ABUSE & THE LIMITS OF THE CRIMINAL SYSTEM

glas Johnson

About one in five girls and one in 13 boys will be sexually abused before they turn 18*

*Includes contact abuse only
Source: CHILD USA



Child sex abuse (CSA) cases are notoriously difficult to prosecute.

- Physical evidence of the assault is present in fewer than 5% of victims
- Cases rely heavily on the children's coherent statements of memories of a traumatic event
 - Children are forced to repeatedly disclose their experiences of abuse over a period of time, and they may deny, recant, and later restate that abuse did actually happen

Sources: Block & Williams, The Prosecution of Child Sexual Abuse (2019) and London, Bruck, Ceci, & Shuman (2007)

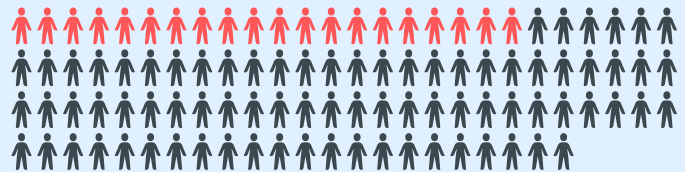
Victims who disclose later in life are effectively silenced by the criminal statute of limitations:

- The average age at the time of reporting child sex abuse is about 52 years
- Child sex abuse acts that occurred years ago may have been considered misdemeanors with a statute of limitations of one year

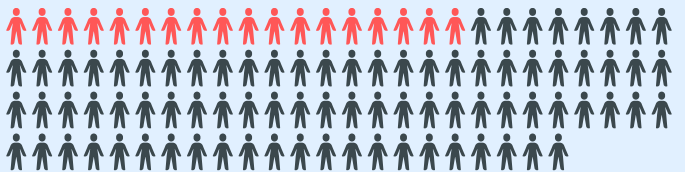
Fewer than 20% of sexual crimes are referred to prosecution and only 1/2 of those result in a conviction

Out of 100 reported cases:

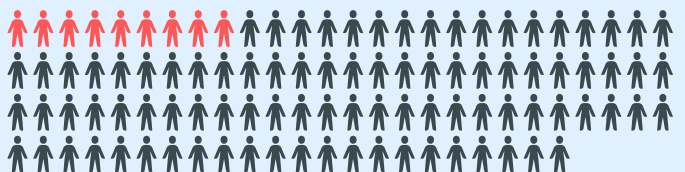
Less than 20 go forward to prosecution



Out of these, only 18 continue to trial after review by the prosecution



Half of cases that go to trial result in a conviction or guilty plea



Source: Block & Williams, The Prosecution of Child Sexual Abuse (2019)

The criminal system keeps many from being held accountable

- Lesser included offenses and plea deals limit discovery into the actions that failed to protect children
- Institutions and organizations that knew about and perpetuated abuse do not face incarceration or penalties.
- Executives rarely face jail time.



When a child is sexually abused within the context of a trusted institution, such as a school or church, the way the institution responds is predictive of how the child will fare. The institution's response has the power to exacerbate or mitigate the harm of the original trauma. When institutions respond with denial, silencing, shaming, or ostracization, the child experiences this breach of trust as a profound betrayal that research shows causes psychological and even physical harm.

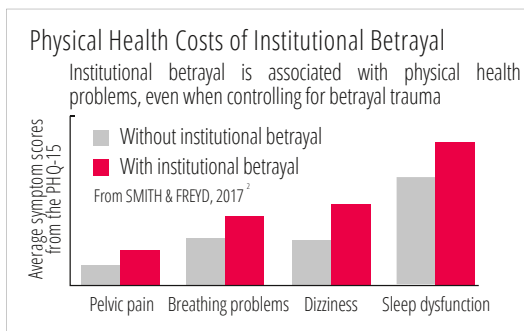
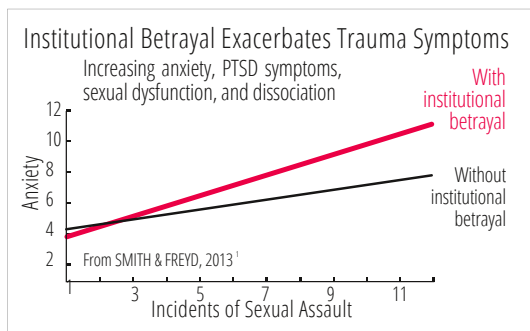
Institutional Betrayal

All too often, institutions fail the very people they should protect.

Institutional Betrayal is a concept described by psychologist Jennifer Freyd referring to "wrongdoings perpetrated by an institution upon individuals dependent on that institution, including failure to prevent or respond supportively to wrongdoings by individuals (e.g. sexual assault) committed within the context of the institution." In a landmark study, Carly P. Smith and Jennifer Freyd (2013) documented psychological harm caused by institutional betrayal. When institutions cover up violations such as child sexual abuse, this institutional betrayal undermines survivors' recovery, increasing anxiety, PTSD symptoms, sexual dysfunction, and dissociation.

Common Examples

- Failure to prevent abuse
- Normalizing abusive contexts
- Difficult reporting procedures
- Inadequate responses
- Covering up the abuse
- Denying the abuse
- Punishing the child
- Suggesting the child's experience might affect the reputation of the institution
- Creating an environment where the child no longer feels like a valued member of the institution
- Creating an environment where continued membership is difficult for the child.



¹ Smith, C.P. & Freyd, J.J. (2013). Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma. *Journal of Traumatic Stress*, 26, 119-124.

² Smith, C. P., & Freyd, J.J. (2017). Insult, then injury: Interpersonal and institutional betrayal linked to health and dissociation. *Journal of Aggression, Maltreatment, & Trauma*, 26, 1117-1131.

INSTITUTIONAL DARVO is a particularly aggressive form of institutional betrayal.

DARVO stands for "Deny, Attack, and Reverse Victim and Offender."

It refers to a reaction perpetrators, particularly sexual offenders, or institutions that protect perpetrators and themselves may display in response to being held accountable. The perpetrator/institution may Deny the behavior, Attack the individual doing the confronting, and Reverse the roles of Victim and Offender such that the perpetrator/institution assumes the victim role and turns the true victim, or the whistle-blower, into an alleged offender. **DARVO not only exacerbates the original harm, it also inflicts another entirely separate one, often in ways that are ongoing in the victim's life.**

This short video is a powerful depiction of institutional betrayal in action with aspects of DARVO



Copy link into your browser: <https://vimeo.com/337408766>

Institutional betrayal is one reason why many victims delay reporting of sexual abuse. While reporting can lead to a good outcome, reporting can be risky. A bad response can make things worse for the victim. A bad response can be a new betrayal trauma. Often times survivors hold off reporting until they are strong enough to weather the blowback of an unsupportive response.

WHY CRIMINAL REFORMS & THE CRIMINAL SYSTEM ARE NOT ENOUGH

ISSUE	CRIMINAL	CIVIL
Burden of Proof	<p>“Beyond a Reasonable Doubt” A much higher & more challenging standard.</p> <p><i>Fewer than 20% of sexual crimes are referred to prosecution, only ½ result in a conviction¹</i></p>	<p>“Preponderance of the Evidence” (51% or greater) Easier to expose hidden sexual predators.</p>
Who is Legally Harmed	<p>Crime Against the State State initiates the action.</p>	<p>Wrongs Against the Victim Victim initiates the action</p>
Power & Voice of Victim	<p>The victims have little power, voice, or control.</p> <p>Victims are witnesses.</p> <p>The DA makes all the decisions DA’s often decline to go forward because of 1) difficulty, 2) burden on system, or 3) political issues.</p>	<p>Victims are parties to the action.</p> <p>Victims have more control, voice and power which aids healing.</p> <p>Victims decide whether to move forward to trial or settle.</p>
Jail Time	<p>Institutions & organizations do not face incarceration or penalties. Executives rarely face jail time.</p>	<p>The civil justice system holds institutions and organizations accountable. It forces bad actors to do better</p>
Incentives to change	<p>Limited penalties and jail time impede institutional change</p>	<p>Jury verdicts motivate institutions & bad actors to change their policies, practices & procedures that fail our children. They allow victims to re-build their lives – to pay for medical and psychological care.</p>
Discovery	<p>Lessor included offenses and plea deals limit discovery into the actions that failed to protect children</p>	<p>There is full discovery into all facts and information leading to relevant evidence</p>

¹ <https://www.ojp.gov/library/publications/prosecution-child-sexual-abuse-partnership-improve-outcomes>

Revival Laws & Exposure of hidden Sexual predators	<p>Acts that are felonies now were considered misdemeanors at the time they were perpetrated. Only felonies have no statute of limitations in Maryland, whereas misdemeanors have a one-year SOL.</p> <p>Under the ex post facto clause of the U.S. Constitution criminal laws cannot be retroactively applied, therefore, victims who were silenced cannot identify and expose hidden sexual predators under criminal laws. <i>Stogner v. California</i>, 539 U.S. 607 (2003)</p>	<p>Civil SOL laws can be applied retroactively. Given the science of traumatology and delayed disclosure victims who were silenced by their predator can come forward when they are able and the doors to justice will be open thereby exposing hidden sexual predators and those that concealed them.</p>
Financial Burden & Cost	<p>The cost of investigating, arresting, formally charging, prosecuting, & incarcerating sexual predators falls entirely on the state. The financial burdens of abuse fall upon the state – impacting social services, education, law enforcement & penal system</p>	<p>The sexual predators and institutions that fail to protect children pay for the cost of abuse and damages.</p>
Insurance Companies	<p>Non-parties</p>	<p>Become liable third parties to the action. Increased premiums or denial of coverage incentivize child protection changes</p>








CHILDUSAAdvocacy.org
3508 Market St, Suite 201, Philadelphia, PA 19104 | info@childusadvocacy.org

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 constitutionally 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.

Chapter 11 Bankruptcy: In theory versus in practice

THE PROBLEM

Chapter 11 is inhumane for child sex abuse (CSA) survivors. The Boy Scouts, USA Gymnastics, and 32 U.S. Catholic dioceses and religious orders have deployed Chapter 11 as a shield while silencing and re-victimizing the CSA victims they created. It is time to amend the Bankruptcy Code to make Chapter 11 humane for these brave CSA survivors.

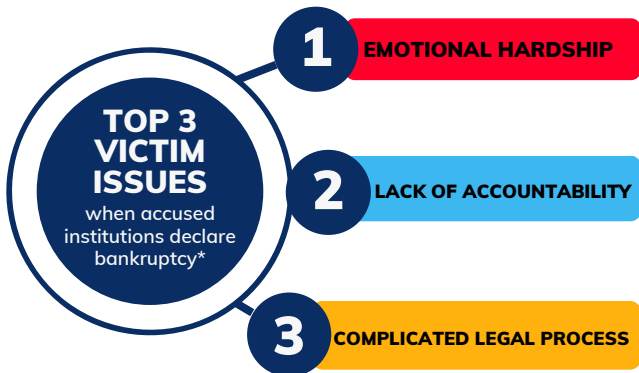
How is the bankruptcy system meant to work?

The Code was designed to provide an honest debtor reprieve from debilitating debt while Chapter 11 is intended to enable an organization to remain operational until it can restructure its debts through a reorganization plan.

How does the bankruptcy system work in practice?

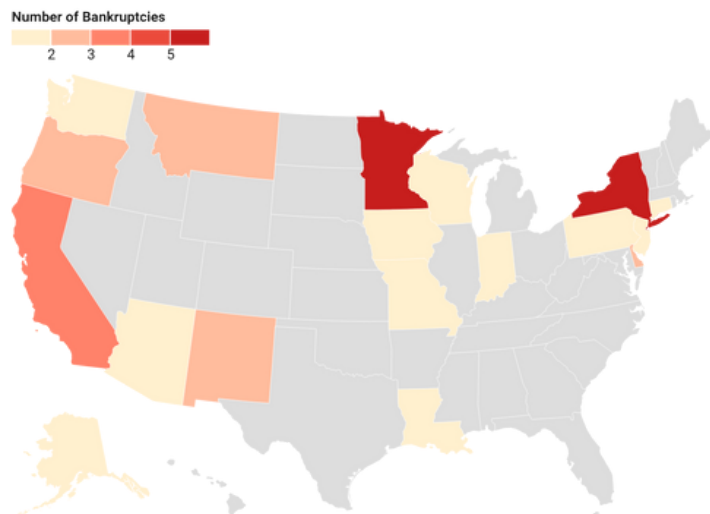
In CSA cases, **Chapter 11 has been transmogrified into a system that flips the roles:** the bad actors are the ones who are offered assistance to put their problems behind them while the victims are herded into a system where they are denied discovery, given no voice during the process, and reduced to mere creditors when what they deserve is justice in the service of the public interest that will compensate them fairly and provide meaningful leverage to force the bad actor to protect all children in the future

The beneficiaries of Chapter 11 include the bad actor debtors and their related organizations that can obtain the benefits of Chapter 11 without the obligations. It has been interpreted to allow for “blanket immunity” to non-debtor third parties who can be released from liability without having to file as a debtor or revealing their assets and wealth. The system is geared to make the debtor and non-debtors whole and unaccountable. **The victims and the public lose out.**



*Based on a survey of 26 victims of sexual abuse who brought claims against Catholic church dioceses in the United States and were subsequently involved in Chapter 11 bankruptcy proceedings filed by the dioceses as part of the settlement process.

Declared Bankruptcies Per State Since 2000



Map uses publicly available data compiled by CHILD USA and the Catholic Project
Created with Datawrapper

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Financial Consequences of Diocesan Bankruptcies

As of 12/1/2020

How is financial impact to churches determined?

- 📄 Tax exempt organizations with gross receipts >\$50,000 must file a Form 990 to the IRS.
- 💰 Religious institutions are exempt from disclosing any financial information to the public so we can't 'see' directly into the finances of the Catholic Church.
- ✝ Catholic Charities
 - Considered the primary charitable arm of the Catholic Church, operating as 501c3 organizations
 - Operated under the management of the diocese(s) in which they are located
 - They receive funds from public, private and philanthropic donations
 - Therefore these organizations must file IRS Form 990

Catholic Charities financial status can serve as a proxy to the financial status of the diocese.

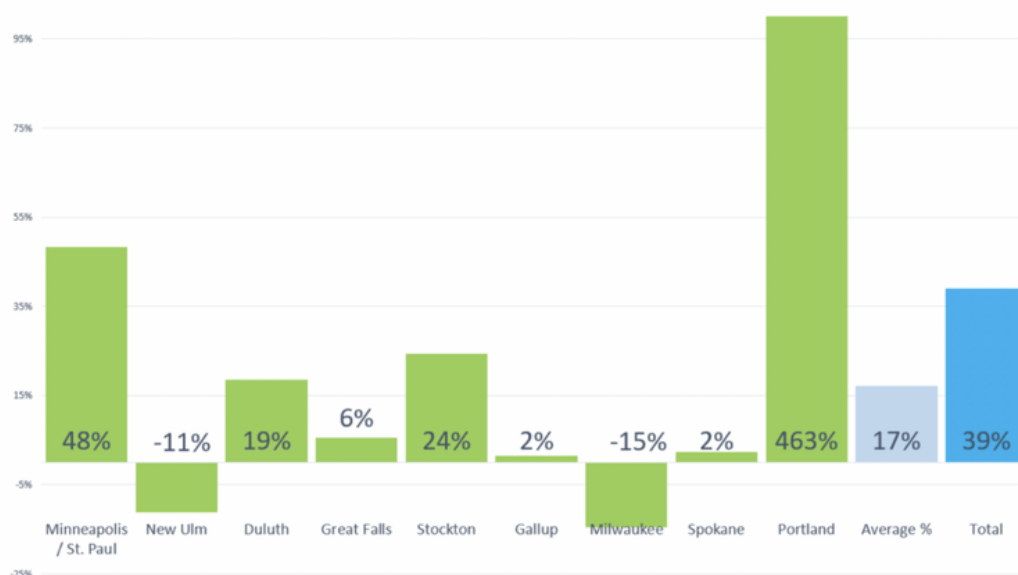
What happened to dioceses that have declared bankruptcy?

- 📄 There are 10 (9) dioceses that have declared bankruptcy in the last 10 years.
 - Stockton, CA; Helena, MT & Great Falls Billings, MT; Saint Paul/Minneapolis, MN; Duluth MN; New Ulm MN, Gallup NM, Milwaukee WI, Spokane WA, and Portland OR
 - Helena and Great Falls were grouped together because together they operate the statewide Catholic Charities organization. These 2 diocese did NOT declare bankruptcy at the same time.
- 📄 Reviewed the 990 forms for all of these diocese to discern financial status of Catholic Charities and thereby some visibility into the financial status of the diocese.

Summarizing the Data

Chart below shows the percentage income change for the 2 years prior to bankruptcy and the 2 years following bankruptcy for Catholic Charities Inc.

Financial gain/loss when Bankruptcy declared



Financial Consequences of Diocesan Bankruptcies

- On average, when a diocese declares bankruptcy, the associated Catholic Charities has a net increase in contributions of **39%**.
- Bankruptcy actually appears to have a significant positive influence on the charitable arm of the Catholic Church.

Tabular Data

Shows donations to charitable arms of the Catholic dioceses for 2 years just prior to bankruptcy filing and 2 years following bankruptcy filing.

DIOCESE	2 YEARS PRIOR	2 YEARS AFTER	% CHANGE
Minneapolis / St. Paul	\$20,816,637.00	\$30,883,568.50	48%
New Ulm	\$2,771,750.00	\$2,463,443.00	-11%
Duluth	\$13,627.00	\$16,154.00	19%
Great Falls	\$350,733.00	\$370,151.50	6%
Stockton	\$2,983,580.50	\$3,710,849.00	24%
Gallup	\$562,111.50	\$570,919.00	2%
Milwaukee	\$5,354,155.50	\$4,577,721.00	-15%
Spokane	\$5,442,108.50	\$5,569,832.50	2%
Portland	\$114,311.00	\$643,484.50	463%
Average %			17%
Total	\$26,936,327.50	\$37,444,166.00	39%

- Significant disparity between income for large and small dioceses
- Only 2 dioceses show loss
- **50%** of the Catholic Charities associated with each diocese show significant increase in income within 2 years of their respective diocese declaring bankruptcy

Caveat

Data from bankruptcies less than 2 years ago simply hasn't been filed yet.



<https://mdessentialsforchildhood.org/>

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: Claudia Remington & Joan Stine, Co-Chairs, Maryland Essentials for Childhood

DATE: February 23, 2023

Maryland Essentials for Childhood strongly supports SB686, Civil Actions- Child Sexual Abuse- Definition, Damages, and Statute of Limitations, The Child Victims Act of 2023. The bill will This bill has five key components: (1) Eliminate the statute of limitations for child sexual abuse; (2) Repeal the so-called “statute of repose”; (3) Establish a permanent lookback window to allow victims previously barred by the statute of limitations to file suit; (4) Allow both public and private entities to be sued; and (5) Eliminate the notice of claims deadlines for public entities in child sexual abuse cases.

Maryland Essentials for Childhood (EFC) is a statewide collective impact initiative to prevent child maltreatment and other adverse childhood experiences (ACEs).¹ The initiative grew out of the Prevention Committee of the State Council on Child Abuse and Neglect (SCCAN). It promotes relationships and environments 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). Maryland EFC includes public and private partners from across the state and receives technical assistance from the U.S. Centers for Disease Control. The initiative provides members the opportunity to learn from national experts and leading states. Using advances in brain science, epigenetics, ACEs, resilience and principles of collective impact, the EFC leadership and working groups support policy and practice that prevent and mitigates childhood trauma.

¹ Channeling Change: Making Collective Impact Work, Stanford Social Innovation Review, https://ssir.org/articles/entry/channeling_change_making_collective_impact_work



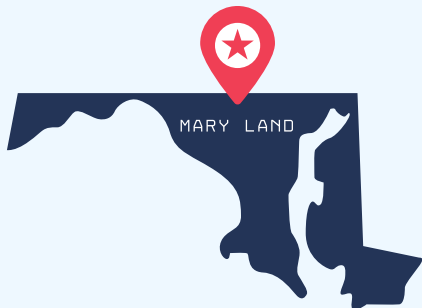
<https://mdessentialsforchildhood.org/>

The goals of the legislation are directly in line with the mission and goals of Maryland Essentials for Childhood:

- Identify Hidden Perpetrators of Child Sexual Abuse
- Disclose the Facts of Child Sexual Abuse to the Public
- Arm Trusted Adults to Protect Children
- Shift the Cost of Abuse from the Victims and the Taxpayer to Those Who Caused It
- Provide Justice for Victims When They are Ready to Come Forward

We have attached the factsheets of Justice 4 Survivors in which Maryland Essentials for Childhood participates, as well as a PowerPoint regarding the legislative history of HB642, 2017 for your consideration.

For the reasons cited here and in the attached fact sheets and PowerPoint, Maryland Essentials for Childhood respectfully urges a favorable report on SB686.



Maryland Needs Statutes of Limitation (SOL) Reform for Child Sexual Abuse (CSA)

Maryland has not passed a window or other SOL revival legislation since 2002. Maryland has never had a criminal SOL. The state made two changes to its short civil SOL in 2003 and 2017, now capping civil actions at age 38.

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE



Identifies Hidden Child Predators and the Institutions that Endanger Children

to the public, shielding other children from future abuse.



Shifts the Cost of Abuse

from the victims and taxpayers to those who caused it.

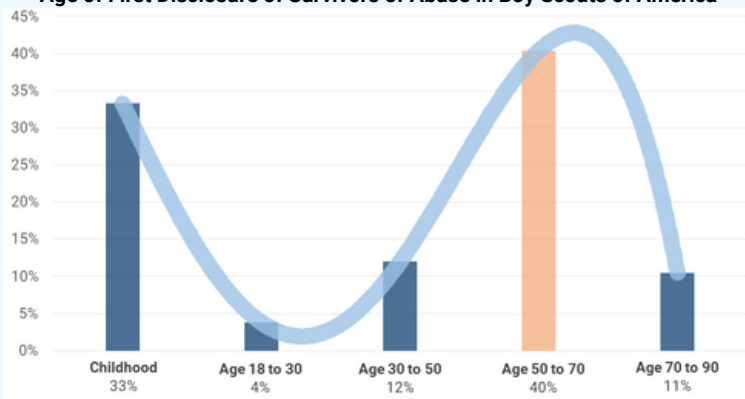


Prevents Further Abuse

by educating the public about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future.

OVER HALF OF SURVIVORS FIRST DISCLOSED AT AGE 50 OR OLDER

Age of First Disclosure of Survivors of Abuse in Boy Scouts of America



Source: CHILD USA's Data on those abused in Boy Scouts of America

More survivors first disclosed between age 50 and 70 compared to any other age group

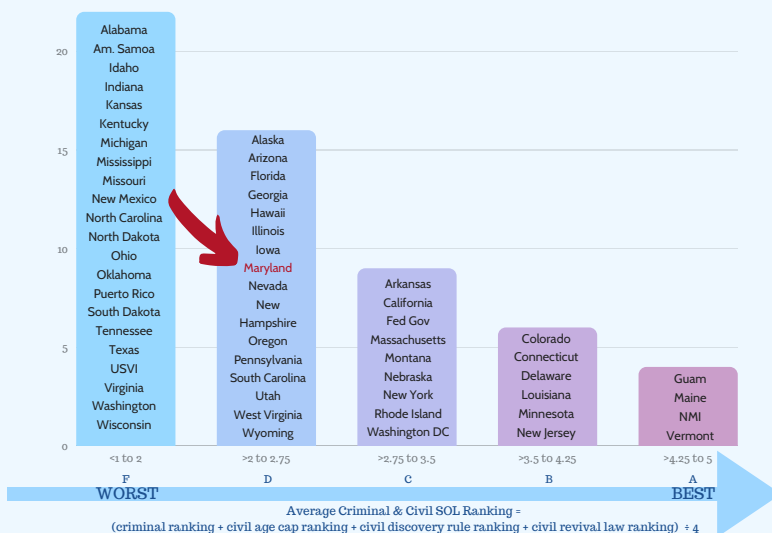
24 STATES AND 3 U.S. TERRITORIES ALREADY HAVE WINDOWS

Window Report Card

Window laws open access to justice for adult survivors of child sex abuse whose civil claims already expired. Survivors can sue while the window is open.

A+	Maine, Vermont, Guam & N. Mariana Islands	Window permanently open for claims against all types of defendants
B	Arkansas, California, Delaware, Hawaii, Louisiana, New Jersey, & New York	Window open for 2 or more years for claims against all types of defendants
C	Arizona, Colorado, Kentucky, Minnesota, Montana, North Carolina, & Washington D.C.	Window not explicitly for claims against all types of defendants
D	Georgia, Michigan, Nevada, & Utah*	Window open for claims against perpetrators only or for physician abuse only
F	Maryland & All Remaining States	No window, hidden predators are protected

CHILD USA RANKINGS OF STATE CRIMINAL & CIVILS SOLS FOR CSA



Maryland is ranked one of the lowest states for criminal and civil SOLs.

visit www.childusa.org/sol-rankings for information about the SOL ranking system



MARYLAND



**LEGISLATIVE HISTORY OF
STATUTE OF REPOSE IN CJ-§117(D)**

**How was the STATUTE OF REPOSE language
included in HB 642 in 2017?**

**SENATE JUDICIAL PROCEEDINGS COMMITTEE BRIEFING
JANUARY 19, 2023**

2017 Bills:
HB642 by Wilson
SB505 by Kelley
SB585 by Young

March 2, 2017 –
Senator Young
withdrew SB585

- All 3 bills applied PROSPECTIVELY and NOT retroactively.
- Controversy at the Senate Hearing on how Senator Kelley became privy to the exact text that Senator Young had spent the previous summer negotiating with the Senate President and his Chief of Staff; dropping a bill identical to Senator Young's legislation.
- Senator Young was chided by Committee to have the conversation behind closed doors vs at the public hearing.

March 9, 2017

1st appearance of proposed amendments with “statute of repose” language

From: "Morton, April" <April.Morton@mlis.state.md.us>

Date: March 9, 2017 at 6:09:30 PM EST

To: 'Mary Ellen Russell' <MRussell@mdcathcon.org>, [John Stierhoff](mailto:John.Stierhoff@venable.com) <jstiernoff@venable.com>

Subject: SB 505 - current copy of proposed amendments

As requested, the revised amendments are attached. Let me know if there is anything else I can do.

Best,
April

April Morton
Committee Counsel | Judicial Proceedings Committee
Maryland General Assembly | Annapolis, MD 21401
p: 410 841-3623 or 301 858-3623 | e: april.morton@mlis.state.md.us

SB0505/818470/2

APRM

BY: [Senator Zirkin](#)

(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 505

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after the semicolon insert “establishing a statute of repose for certain civil actions relating to child sexual abuse;”; and in the same line, after “action” insert “filed more than a certain number of years after the victim reaches the age of majority”.

March 9, 2017

- MCC forwarded JPR staff email and SB505 amendments to Delegate Atterbeary
- Delegate Atterbeary forwarded emails and SB505 amendments to Delegate Wilson

From: C Wilson [mailto:ctwilson22@gmail.com]
Sent: Friday, March 10, 2017 2:45 PM
To: Wilson, C.T. Delegate <CT.Wilson@house.state.md.us>
Subject: Fwd: SB 505 - current copy of proposed amendments

----- Forwarded message -----

From: "VEAESQ" <veaesq@gmail.com>
Date: Mar 9, 2017 9:24 PM
Subject: Fwd: SB 505 - current copy of proposed amendments
To: "C Wilson" <ctwilson22@gmail.com>
Cc:

----- Forwarded message -----

From: "Mary Ellen Russell" <MRussell@mdcathcon.org>
Date: Mar 9, 2017 9:15 PM
Subject: Fwd: SB 505 - current copy of proposed amendments
To: "Vanessa Atterbeary" <veaesq@gmail.com>
Cc: "John Stierhoff" <jstierhoff@venable.com>

Hi Vanessa,
Here's the language JPR may be voting on tomorrow. We'll see you at 10 but feel free to call me at any time before then if you want to talk.
Thanks,
Mary Ellen

Begin forwarded message:

From: "Morton, April" <April.Morton@mlis.state.md.us>
Date: March 9, 2017 at 6:09:30 PM EST
To: 'Mary Ellen Russell' <MRussell@mdcathcon.org>, John Stierhoff <jstierhoff@venable.com>
Subject: **SB 505 - current copy of proposed amendments**

Quick Path to Passage

- 3/13- SB505 JPR Favorable w/amendments
- 3/15- SB505 Passed 3rd Reading 47-0
- 3/15- HB642 JUD Favorable w/amendments
- 3/17- HB642 Passed 3rd Reading 140-0
- 3/24- HB642 Passed 3rd Reading in Senate 47-0
- 4/4- SB505 Passed 3rd Reading in House 139-0



SIGNIFICANT CONSTITUTIONAL & POLICY IMPLICATIONS OF SO-CALLED STATUTE OF REPOSE*

- Committee
 - Floor
- Committee Bill Files
- Revised Fiscal & Policy Notes

*potentially irreversible by MGA



ABSOLUTELY
NOTHING

PENNSYLVANIA GRAND JURY REPORT RELEASED



Report I of the 40th Statewide
Investigating Grand Jury

REDACTED

By order of PA Supreme Court July 27, 2018

January 2019 Speaker Busch requests Delegate Wilson reintroduce his bill to eliminate the SOL

January 14, 2019
Venable sends 13-
page legal brief to
Maryland Catholic
Conference on
SOR

VENABLE[®] LLP

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T 410.494.6200 F 410.821.0147 www.Venable.com

Kurt J. Fischer

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kjfischer@venable.com

January 14, 2019

VIA E-MAIL AND FIRST CLASS MAIL

Jennifer L. Briemann, Executive Director
Maryland Catholic Conference
10 Francis Street
Annapolis, Maryland 21401

Re: Statute of Repose in Md. Code. Ann., Cts. & Jud. Proc. ("CJP") § 5-117(d)

Dear Ms. Briemann:

In Chapter 12, Section 1, of the Laws of 2017 (House Bill 642), the General Assembly repealed and reenacted CJP § 5-117 to adopt a statute of repose in subsection (d) barring child sexual abuse claims against persons and governmental entities not alleged to be the perpetrator of the abuse that are filed more than 20 years after the victim reaches the age of majority. Further, Chapter 12, Section 3, stated that the statute of repose "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."

You have asked us whether the General Assembly can enact retroactive legislation to repeal or amend CJP § 5-117(d) and revive causes of action that are barred under its terms. We have concluded that such legislation would be unconstitutional under Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution because the legislation would violate substantive, vested rights of defendants to raise the statute of repose defense enacted in Chapter 12. Under Maryland law, a statute of repose creates a substantive right or immunity to

February 7, 2019
HB687 by
Delegate Wilson
Introduced on 1st
Reading

No retroactivity/look back window

HOUSE BILL 687

D3, D4

9lr1025

By: **Delegates Wilson, Atterbeary, Bromwell, and D.E. Davis**

Introduced and read first time: February 7, 2019

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Child Sexual Abuse – Statute of Limitations**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act **may not be construed**
23 **to apply retroactively** to revive any action that was barred by the application of the period
24 of limitation applicable before October 1, 2019.

Mid-February 2019
HB687 amended by
Delegate Wilson and
argued in Committee
Hearing February
28th

Look Back Window/Retroactivity Added

HB0687/172213/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 687

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and D.E. Davis” and substitute “D.E. Davis, Moon, Lopez, Grammer, Bartlett, Crutchfield, McComas, R. Watson, Arikan, Shetty, and W. Fisher”; in line 2, after “Abuse –” insert “Definition and”; after line 2, insert “(Hidden Predator Act of 2019)”; in line 3, after the first “of” insert “altering the definition of “sexual abuse”;”; and in lines 4 and 5, strike “providing for the application of this Act” and substitute “providing for the retroactive application of this Act under certain circumstances”.

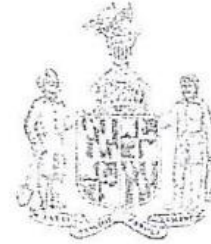


March 12, 2019
AG Letter of Advice
to Chairman
Clippinger -
Constitutionality of
Look-Back Window
Unclear

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March 12, 2019

The Honorable Luke Clippinger
101 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Clippinger:

You have asked for advice about a proposed amendment to House Bill 687, "Civil Actions - Child Sexual Abuse - Statute of Limitations," which permits an action for damages arising out of an alleged incident or incidents that occurred while the victim was a minor to be filed "at any time." Specifically, you have asked whether this elimination of the statute of limitations could constitutionally be applied to cases that were barred by the statute of limitations prior to the effective date of the bill. In 2003, in a letter to the then Chairman of the Judicial Proceedings Committee, I advised that the answer to that question was not clear, but that it was possible that retroactive application to barred cases could be found to violate the due process requirements of the Maryland Constitution. Letter to the Honorable Brian E. Frosh from Kathryn M. Rowe, Assistant Attorney General dated March 10, 2003 ("the 2003 letter"). This remains the state of the law.

March 15, 2019

Delegate Dumais (Vice Chair in 2017)

Suggests: Look Back Window (retroactivity) is unconstitutional, because of “statute of repose”

Requested an AG Letter of Advice to support

Large DC law firm brief to support it

Will propose amendment to remove Look Back Window

January 14th
Venable Brief

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January 14, 2019

VIA E-MAIL AND FIRST CLASS MAIL

Jennifer L. Briemann, Executive Director
Maryland Catholic Conference
10 Francis Street
Annapolis, Maryland 21401

Re: Statute of Repose in Md. Code. Ann., Cts. & Jud. Proc. ("CJP") § 5-117(d)

Dear Ms. Briemann:

In Chapter 12, Section 1, of the Laws of 2017 (House Bill 642), the General Assembly repealed and reenacted CJP § 5-117 to adopt a statute of repose in subsection (d) barring child sexual abuse claims against persons and governmental entities not alleged to be the perpetrator of the abuse that are filed more than 20 years after the victim reaches the age of majority. Further, Chapter 12, Section 3, stated that the statute of repose "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."

You have asked us whether the General Assembly can enact retroactive legislation to repeal or amend CJP § 5-117(d) and revive causes of action that are barred under its terms. We have concluded that such legislation would be unconstitutional under Article 24 of the Maryland Declaration of Rights and Article III, § 40 of the Maryland Constitution because the legislation would violate substantive, vested rights of defendants to raise the statute of repose defense enacted in Chapter 12. Under Maryland law, a statute of repose creates a substantive right or immunity to

March 16, 2019 Delegate Dumais— Floor Amendment Striking Lookback Window as Unconstitutional – 2nd AG Letter of Advice

In significant part read:

It is my view that these provisions **would most likely be found unconstitutional** as interfering with vested rights as applied to cases that were covered by CJ § 5-117(d) and Section 3 of Chapter 12 of 2017.¹

¹ In a letter to The Honorable Luke Clippinger March 12, 2019, I advised the constitutional status of retroactive application of the bill as amended was **not clear**, but that it could possibly be upheld. This is essentially the same advice I gave to then Chairman Frosh in 2003. **I admit, however, that I was unaware of Chapter 12 of 2017** which has the effect of **making CJ § 5-117(d) a statute of repose rather than a statute of limitation**. A copy of the Clippinger letter is attached.

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CONFIDENTIAL
March 16, 2019

The Honorable Kathleen M. Dumais
313 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Dumais:

March 16, 2019 -HOUSE FLOOR DEBATE on DUMAIS AMENDMENT (rejected 3-131)

“A statute of repose was never my intention. You know when I learned about statute of repose? Yesterday.”

-Delegate C.T. Wilson

“We should speak...clearly in a bi-partisan fashion with one voice that we want to give those victims [of child sexual abuse] every opportunity possible to present their claims. If the people who sit on the Maryland Court of Appeals determine that is impossible, leave that up to them. Let’s do our job.” *–Gentleman from Western Maryland*



March 18, 2019 – HB687 PASSED HOUSE (135-3)

March 28, 2019 – HB687 HEARING IN JPR

April 3, 2019 – JPR -UNFAVORABLE REPORT – (5-5, Senator Smith excused for deployment)

- Zirkin, a lawyer, introduced the amendments in 2017 that included the repose statute. He said “it wasn’t anyone’s intent” to grant permanent immunity.*
- Permanent immunity “was never discussed,” said Del. Vanessa E. Atterbeary, (D-Howard), a lawyer who is vice chair of the Judiciary Committee. “I was in meetings with the Archbishop of Baltimore,” she said. “That’s the sort of conversation I would have remembered.”*



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

March 28, 2019 – HB687 HEARING IN JPR
April 3, 2019 – JPR -UNFAVORABLE REPORT –
(5-5, Senator Smith excused for deployment)

Of the 2017 Bill:

“I was working with them in good faith,”
Wilson, a lawyer, said of the church. “They
were behind the scenes, crafting language
that protects them forever.” “It wasn’t the
intent of the people and therefore they
defrauded the Body and the citizens of this
state.” Delegate C.T. Wilson



2020 SESSION— HB974

- Passed the House (127-0)

2021 SESSION- SB134/HB263

- Hearing in Senate- no JPR vote
 - House bill withdrawn

MARYLAND



THANK YOU

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CHILD USAAdvocacy

STATE COURTS: ON THE CONSTITUTIONALITY OF REVIVAL LAWS

STATE	REVIVAL LAW	CASE	HOLDING
California	window (CAL. CIV. PROC. CODE § 340.1) 2019	<u>Huth v. Cosby</u> , No. BC565560, 2022 WL 17583304, at *3 (Cal.Super. May 17, 2022)	"A potential defendant has no vested right in the sense of repose conferred by his knowledge a lawsuit against him appears to be barred, such that there is no constitutional impediment to retrospective application of a statute reviving a civil cause of action. Even if such a vested right did exist, vested rights are not immune from retroactive laws when an important state interest is at stake " (citations omitted)
Connecticut	age (C.G.S.A. § 52-577d) 2019	<u>Doe v. Hartford Roman Catholic Diocesan Corp.</u> , 317 Conn. 357, 406 (Conn. 2015)	"[The revival law] is a rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child" and the "revival of child sexual abuse victims' previously time barred claims serves a legitimate public interest and accomplishes that purpose in a reasonable way"
Delaware	window (DEL. CODE tit. 10, § 8145) 2007	<u>Sheehan v. Oblates of St. Francis de Sales</u> , 15 A.3d 1247, 1258-60 (Del. 2011)	"Under Delaware law, the CVA can be applied retroactively because it affects matters of procedure and remedies, not substantive or vested rights. . . . Furthermore, we do not sit as an überlegislature to eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of an otherwise valid law."
Georgia	window (O.C.G.A. § 9-3-33.1) 2015	<u>Harvey et al. v. Merchan</u> , 860 S.E.2d 561, 566 (Ga. 2021)	"[S]tatutes of limitations are subject to a relatively large degree of legislative control. [T]he legislature's choices in this respect reflect public policy considerations, and the protection afforded by such statutes have never been regarded as a fundamental right. " (Citations omitted)
Maine	window (7 ME ST T. 14 § 752-C) 2021	<u>Dupuis v. Roman Catholic Bishop of Portland</u> , No. BCD-CIV-2002-00044 (Business and Consumer Court, Cumberland County Feb. 14, 2023).	Holding that purpose of the revival statute "reflects a unique and evolved societal recognition of the nature of child sexual abuse and the headwinds against victims' ability to bring their claim. " and that caselaw "does not extend Maine's vested rights doctrine to statutes of limitations."
Massachusetts	age + discovery (MA ST 260 § 4C) 2014	<u>Slinye v. Previte</u> , 41 N.E.3d 732, 737, 739 (Mass. 2015)	"In evaluating the reasonableness of applying a statute retroactively, there are three principal factors that we examine: the public interest that motivated the Legislature to enact the statute, the nature of the rights affected by the retroactivity, and the scope of the impact of the statute on those rights. The purpose of the act, as reflected in its preamble, and reinforced by legislative history, is to preserve public safety and protect children who have been abused by enabling them to seek a remedy for severe injuries that they did not appreciate for long periods of time due to the abuse. . . . [t]his is unquestionably an important public purpose; there is a strong interest and a well-established community consensus in favor of protecting children from abuse." (Citations omitted)
Minnesota	window/discovery (Minn.Stat. § 541.073) 1989	<u>K.E. v. Hoffman</u> , 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990)	"A limitations statute which applies merely to a party's remedy does not create a vested right in respondents. Accordingly, we hold the legislature did not impair respondents' due process rights by enacting section 541.073 which lifted the limitations bar and revived appellant's claim against them."
Montana	discovery (MCA § 27-2-216) 1989	<u>Cosgriffe v. Cosgriffe</u> , 864 P.2d 776, 779 (Mont. 1993)	"The propriety of the actions of the state legislature in addressing a public need and a present public policy is not to be examined by this Court where we have previously stated that the statute has a reasonable relation to the legitimate purpose of the State. . . [t]here are no constitutional or statutory obstacles to legislative enactments of statutes relating to remedies that are retroactive in operation. . . such legislation does not take away any defenses which would have been a vested right in the defendant in the case"
New Jersey	window + age cap (N.J. STAT. ANN. § 2A:14-2B) 2019	<u>B.A. v. Janet Golabek, et. al.</u> , No. 18CV17523KSHCLW, 2021 WL 5195665, at *6 (D.N.J. Nov. 8, 2021) <u>R.A. v. W. Essex Reg'l Sch. Dist. Bd. of Educ.</u> , 2021 N.J. Super. Unpub. LEXIS 1951 (Super. Ct. App. Div. Aug. 30, 2021)	" The public policy articulated in the cited cases overwhelmingly favors preserving the claims in the face of a statute of limitations—where courts have bent it, the lean is toward the plaintiffs . . . [p]ut another way, defendants do not have a "legal defense" in the statute of limitations that stops the action cold..." "First, retroactive application is appropriate where the Legislature provided for retroactivity expressly, either in the language of the statute itself or its legislative history, or implicitly, by requiring retroactive effect to make the statute workable or to give it the most sensible interpretation. Second, retroactive application is warranted when the statute is ameliorative or curative. Third, retroactive application of a law is justified when the parties expectations warrant retroactive application." (Citations omitted)
			"[T]he revival statute's public purpose of correcting injustices

New Jersey	adult window (N.J. STAT. ANN. § 2A:14-2B) 2019	<u>Lili Bernard, v. William Cosby</u> , No. 121CV18566NLHMJS, 2023 WL 22486, at *8 (D.N.J. Jan. 3, 2023)	suffered by victims of sexual offenses outweighs any expectation in an earlier statute of limitations for conduct that was illegal at the time of commission , and that a defendant's expectation in the continuance of a law cannot alone constitute a vested right or manifest injustice." (Citations omitted)
New York	window (NY CPLR § 214-g) 2019	<u>Torrey v. Portville Cent. Sch.</u> , 66 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2020) <u>Giuffre v. Dershowitz</u> , No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020)	"[A] claim-revival statute will satisfy the Due Process Clause of the State Constitution if it was enacted as a reasonable response in order to remedy an injustice." "The CVA's claim-revival provision obviously reflects the New York State Legislature's desire to correct a perceived injustice, i.e., that the statute of limitations for certain claims expired before child victims of sexual abuse recovered from past traumas to a degree sufficient to assert their rights." (Citations omitted)
South Dakota	discovery (S.D.C.L. § 26-10-25) 1991	<u>DeLonga v. Diocese of Sioux Falls</u> , 329 F. Supp. 2d 1092, 1104 (D.S.D. 2004)	"This Court agrees with the South Dakota Supreme Court's determination that the South Dakota Legislature decided that special protection was necessary for vindication of victims of sexual abuse for acts that occurred in the past as well as those that occurred in the future. It is consistent with that legislative decision to provide protection for victims of sexual abuse that the discovery statute of limitations not be interpreted so as to render most non-offender defendants immune from suit." (citations omitted)
Washington D.C.	window (D.C. CODE § 12-301) 2019	<u>Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church</u> , No. 2021 CA 0013531B (D.C. Superior Court)	" The District of Columbia Council felt that it was time to revisit the statute of limitation for individuals alleging sexual abuse. Its rational basis for doing so was straightforward: ensuring that the opportunity to seek justice is not arbitrarily foreclosed to survivors who faced tremendous barriers to reporting their crimes."