



<https://mdessentialsforchildhood.org/>

TESTIMONY IN SUPPORT OF SB686  
Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of Limitations  
(The Child Victims Act of 2023)  
**\*\*SUPPORT\*\***

**TO: Hon. Luke Clippinger. Chair, and members of the House Judiciary Committee**

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

**DATE: March 28, 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, as amended by the sponsor.** 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).<sup>1</sup> 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.

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<sup>1</sup> Channeling Change: Making Collective Impact Work, Stanford Social Innovation Review, [https://ssir.org/articles/entry/channeling\\_change\\_making\\_collective\\_impact\\_work](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 coalition 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.***

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

## 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.

# 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.

## WHY CRIMINAL REFORMS & THE CRIMINAL SYSTEM ARE NOT ENOUGH

ISSUE	CRIMINAL	CIVIL
<b>Burden of Proof</b>	<p>“Beyond a Reasonable Doubt” A much higher &amp; more challenging standard.</p> <p><i>Fewer than 20% of sexual crimes are referred to prosecution, only ½ result in a conviction<sup>1</sup></i></p>	<p>“Preponderance of the Evidence” (51% or greater) Easier to expose hidden sexual predators.</p>
<b>Who is Legally Harmed</b>	<p>Crime Against the State State initiates the action.</p>	<p>Wrongs Against the Victim Victim initiates the action</p>
<b>Power &amp; Voice of Victim</b>	<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>
<b>Jail Time</b>	<p>Institutions &amp; 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>
<b>Incentives to change</b>	<p>Limited penalties and jail time impede institutional change</p>	<p>Jury verdicts motivate institutions &amp; bad actors to change their policies, practices &amp; procedures that fail our children. They allow victims to re-build their lives – to pay for medical and psychological care.</p>
<b>Discovery</b>	<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>

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

<b>Revival Laws &amp; Exposure of hidden Sexual predators</b>	<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>
<b>Financial Burden &amp; Cost</b>	<p>The cost of investigating, arresting, formally charging, prosecuting, &amp; incarcerating sexual predators falls entirely on the state. The financial burdens of abuse fall upon the state – impacting social services, education, law enforcement &amp; penal system</p>	<p>The sexual predators and institutions that fail to protect children pay for the cost of abuse and damages.</p>
<b>Insurance Companies</b>	<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  
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# THE CHILD VICTIMS' ACT OF 2023



## JUSTIFICATION FOR THE DIFFERENT CAPS FOR PUBLIC V. PRIVATE ENTITIES

The bill proposes to cap non-economic damages for revived claims at \$850,000 for public defendants and \$1.5 million for private defendants. There are several justifications for this difference:

1. The State and local governments have already born significant costs associated with the harm done to victims of child sexual assault—those for whom the government bears responsibility and those harmed by private entities as well. There are myriad costs imposed, including those associated with: 1) health care, including emergency services and mental health care; 2) substance use treatment; 3) law enforcement engagement and incarceration; 4) domestic violence intervention; 5) needing additional resources for trauma-informed care and educational accommodations in schools; 6) disability services; and 7) loss of productivity from victims who struggle to remain employed and independent.<sup>1</sup>
2. When the State or local government pays monies in settlement or because of a court judgment, those monies come from public funds. Protection of public funds is important to maintain Maryland's consistently strong financial condition at the state and county level.
3. Private organizations can file for Chapter 11 bankruptcy, discharging debt at pennies on the dollar and reorganizing to remain in business. A State may not declare bankruptcy and municipal governments have limited access to a constrained form of bankruptcy. Governmental entities are not able to limit liability through the Chapter 11 process.

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<sup>1</sup> Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

Cora Peterson et al., *The Economic Burden of Child Maltreatment in the United States, 2015*, 86 CHILD ABUSE NEGL. 178 (2018).

Peterson et al. (2018) estimated the population economic burden of all investigated cases of child maltreatment (all types) in the US in 2015. They estimated that the aggregate economic burden rose to \$2 trillion. The per-victim cost estimate for each non-fatal abuse victim was **\$830,928**.

Letourneau et al. (2018) estimated lifetime cost to society of child sexual abuse cases occurring in the US in 2015 at \$9.3 billion, and the average cost of non-fatal per female victim was estimated at **\$262,347**.



*Fundamentally, there is a difference between suing the State or local government and suing a private entity. Governmental entities are entitled to sovereign immunity and cannot be sued unless the legislature permits an action and only to the extent permitted by that statute. Since the General Assembly is considering, through The Child Victims' Act of 2023, opening the State and local governments to liability, the legislature should also consider the extent of that liability. Setting a cap for governmental liability at lower than for private entities reflects the existence of sovereign immunity and the factors listed above.*

***Prepared by Kathleen Hoke, Kathryn Robb, and Vanessa Milio***

# PARITY BETWEEN PUBLIC AND PRIVATE ENTITIES?



**PUBLIC ENTITIES  
HAVE BEEN PAYING  
MORE THAN THEIR  
FAIR SHARE OF THE  
COSTS FOR  
DECADES!**

# 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?

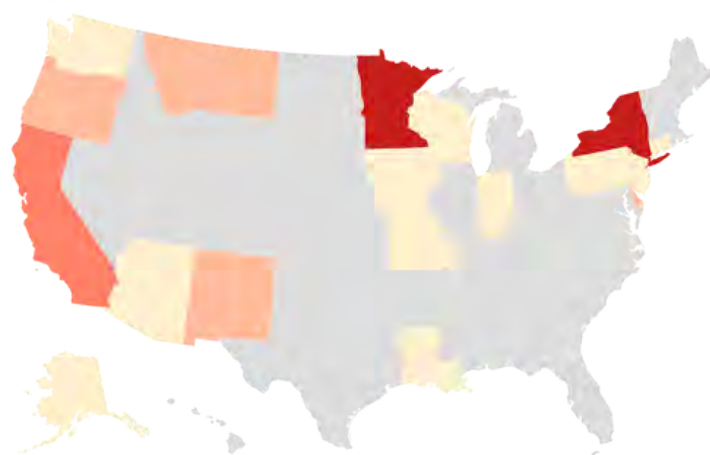
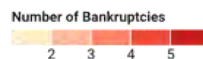
In CSA cases, **Chapter 11 has been transmogrified into a system that flips the roles:** the bad actors are the ones who are offered assistance to put their problems behind them while the victims are herded into a system where they are denied discovery, given no voice during the process, and reduced 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.

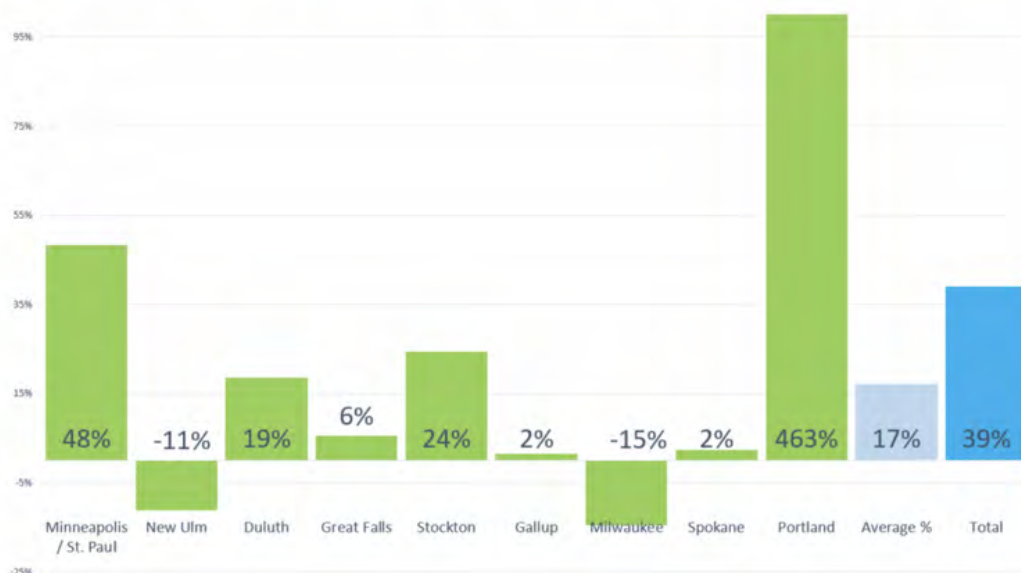
## What happened to dioceses that have declared bankruptcy?

- 📄 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%
<b>Average %</b>			<b>17%</b>
<b>Total</b>	<b>\$26,936,327.50</b>	<b>\$37,444,166.00</b>	<b>39%</b>

- 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.

*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.*

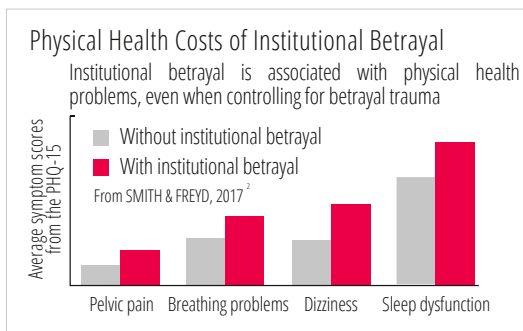
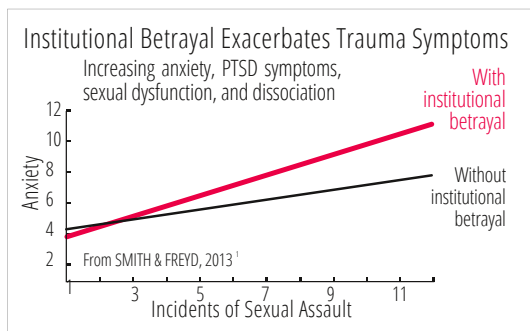
# Institutional Betrayal

*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.



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

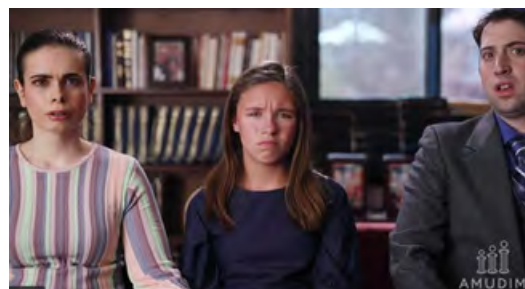
<sup>2</sup> Smith, C. P., & Freyd, J.J. (2017). Insult, then injury: Interpersonal and institutional betrayal linked to health and dissociation. *Journal of Aggression, Maltreatment, & Trauma*, 26, 1117-1131.

**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.



**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 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

# 1<sup>st</sup> appearance of proposed amendments with “statute of repose” language

**From:** "Morton, April" <[April.Morton@mlis.state.md.us](mailto:April.Morton@mlis.state.md.us)>

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

**To:** 'Mary Ellen Russell' <[MRussell@mdcathcon.org](mailto:MRussell@mdcathcon.org)>, [John Stierhoff](mailto:John.Stierhoff@venable.com) <[jstiernoff@venable.com](mailto: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](mailto: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](mailto:ctwilson22@gmail.com)]  
**Sent:** Friday, March 10, 2017 2:45 PM  
**To:** Wilson, C.T. Delegate <[CT.Wilson@house.state.md.us](mailto:CT.Wilson@house.state.md.us)>  
**Subject:** Fwd: SB 505 - current copy of proposed amendments

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

**From:** "VEAESQ" <[veaesq@gmail.com](mailto: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](mailto:ctwilson22@gmail.com)>  
**Cc:**

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

**From:** "Mary Ellen Russell" <[MRussell@mdcathcon.org](mailto: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](mailto:veaesq@gmail.com)>  
**Cc:** "John Stierhoff" <[jstierhoff@venable.com](mailto: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](mailto:April.Morton@mlis.state.md.us)>  
**Date:** March 9, 2017 at 6:09:30 PM EST  
**To:** 'Mary Ellen Russell' <[MRussell@mdcathcon.org](mailto:MRussell@mdcathcon.org)>, John Stierhoff <[jstierhoff@venable.com](mailto: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 3<sup>rd</sup> Reading 47-0
- 3/15- HB642 JUD Favorable w/amendments
- 3/17- HB642 Passed 3<sup>rd</sup> Reading 140-0
- 3/24- HB642 Passed 3<sup>rd</sup> Reading in Senate 47-0
- 4/4- SB505 Passed 3<sup>rd</sup> 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

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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

February 7, 2019  
HB687 by  
Delegate Wilson  
Introduced on 1<sup>st</sup>  
Reading

# No retroactivity/look back window

## HOUSE BILL 687

D3, D4

9lr1025

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

Introduced and read first time: February 7, 2019

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

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

22  
23  
24

SECTION 2. AND BE IT FURTHER ENACTED, That this Act **may not be construed to apply retroactively** to revive any action that was barred by the application of the period 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

BRIAN E. FROSH  
ATTORNEY GENERAL

ELIZABETH F. HARRIS  
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
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DAVID W. STAMPER  
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

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)

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

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Requested an AG Letter of Advice to support

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Large DC law firm brief to support it

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Will propose amendment to remove Look Back Window

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# January 14<sup>th</sup> Venable Brief

Kurt J. Fischer

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January 14, 2019

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## March 16, 2019 Delegate Dumais– Floor Amendment Striking Lookback Window as Unconstitutional – 2<sup>nd</sup> 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.<sup>1</sup>

<sup>1</sup> 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.

BRIAN E. FROSH  
ATTORNEY GENERAL

ELIZABETH E. HARRIS  
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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*

***Claudia Remington, JD,  
Co-Chair, Maryland Essentials for Childhood  
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240-506-3050***



**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.



**GBMC**

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**CENTER FOR HOPE**



MARYLAND  
FAMILY  
NETWORK



maryland coalition of families



Maryland Children's Alliance, Inc.



PROTECTING CHILDREN, PROVIDING SUPPORT, PROMOTING CHANGE



CENTER for CHILDREN



BOYS & GIRLS CLUBS  
OF HARFORD & CECIL COUNTIES



CITI Ministries  
*Celibacy Is The Issue*



HARRITY4CHARITY

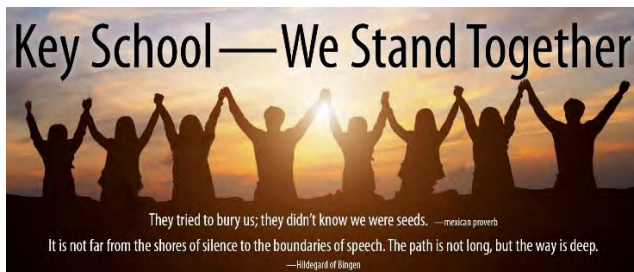
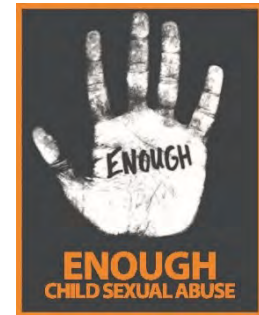
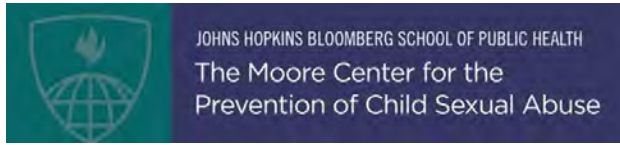


**The Family Tree**

AG

ASHLAR GOVERNMENT RELATIONS









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