



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 686
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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 Judiciary 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 Judiciary Committee to report favorably on Senate Bill 686