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2025 POSITION PAPER

HB 1378: Time Limitation on Child Sexual Abuse Claims

UNFAVORABLE

HB 1378 UNCONSTITUTIONALLY INFRINGES UPON VESTED RIGHTS AND UNDERMINES THE GENERAL ASSEMBLY'S HISTORIC COMMITMENT TO FAIRNESS AND THE RIGHTS OF SEXUAL ABUSE SURVIVORS

HB 1378, as introduced and amended, violates the Maryland Constitution and the Declaration of Rights, and stands contrary to longstanding Maryland jurisprudence on vested rights. The bill purports to severely and retroactively impair *existing* causes of action against the State of Maryland—whether by barring causes of action from being brought after January 1, 2026 (as introduced) or by taking away the jury trial rights of numerous survivors of child sexual abuse committed by State agents, and providing for only a 30-day window for claims to be filed (as amended).

HB 1378 also does not reflect this body's commitment to the right of sexual abuse survivors to be heard and achieve justice, or its commitment to policies that do not disproportionately affect communities of color.

The Maryland Association for Justice respectfully requests an UNFAVORABLE report on HB 1378.

HB 1378 as introduced and amended retroactively impairs, interferes with or abolishes the vested right to maintain an accrued common law cause of action for sexual abuse and is unconstitutional under longstanding Maryland Supreme Court precedent, reaffirmed in the Court's recent landmark decision in *Roman Catholic Archbishop v. John Doe, et al.*

Since this State's founding, Maryland law has recognized the right of an injured person in his or her cause of action.

For example, the Maryland Declaration of Rights provides:

Article 19. Relief for injury to person or property
That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

Article 23. Trial by jury
The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of $25,000, shall be inviolably preserved.

Article 24. Due process
That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life,

liberty or property, but by the judgment of his peers, or by the Law of the land.

Article III, Section 40 of the Maryland Constitution provides that "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation." An accrued cause of action is not only a precious opportunity to obtain justice, but is also a form of property. *Roman Cath. Archbishop of Washington v. Doe*, No. 10 SEPT. TERM, 2024, 2025 WL 375996, at *11 (Md. Feb. 3, 2025).

Definition of vested right.

A vested right, as that term is used in relation to constitutional guarantees, implies an interest which it is proper for the state to recognize and protect, and of which the individual may not be deprived arbitrarily without injustice. *Langston v. Riffe*, 359 Md. 396, 420 (2000).

A survivor of sexual abuse has a vested right in her or his accrued cause of action.

There is a vested right in an accrued cause of action and the Maryland Constitution precludes the impairment of such right. This principle applies to both common law and statutory causes of action. *Dua v. Comcast*, 370 Md. at 633.

A cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. *Poffenberger, Jr. v. Risser et al.*, 290 Md. 631, 636 (1981). In the Child Victims Act of 2023, the General Assembly wisely and commendably removed time bars on causes of action for sexual abuse against any person or institution. Survivors who have been sexually abused up to the present day have a vested right in their causes of action, which cannot be constitutionally impaired.

Dua, et al., v. Comcast Cable of Maryland, Inc., et al., 370 Md. 604 (2002), is the leading Maryland case concerning vested rights in causes of action. The *Dua* case arose from two separate and consolidated appeals regarding retroactive statutes, one of which retroactively established subrogation rights for HMOs, and the other which retroactively changed the law applicable to late fee charges by cable TV providers. The Maryland Supreme Court conducted an exhaustive and detailed analysis of the constitutionality of the two legislative acts which, it held, were unconstitutional because they retroactively impaired, interfered with or abolished accrued causes of action and deprived plaintiffs of vested rights.

In *Dua*, the Maryland Supreme Court reviewed and or cited roughly 40 prior decisions from that Court spanning over 180 years of consistent jurisprudence that all reached the conclusion that retroactive legislation that impairs vested rights is unconstitutional. In addition to those Maryland cases, the Maryland Supreme Court cited with approval and adopted the holdings of numerous out of state cases to the same end.

Dua establishes that HB 1378 is unconstitutional:

> [A] constitutional provision, like Article 19, providing that persons are entitled to justice " 'by the law of the land,' " means " 'that the

> law relating to the transaction in controversy, at t
> he time when it is complete, shall be an inherent element of the case, and shall guide the decision; and that the case shall not be altered, in substance, by any subsequent law' ". *Dua*, 370 Md. at 645 (quoting *Gibson v. Commonwealth of Pennsylvania*, 490 Pa. 156, 160–162, 415 A.2d 80, 83–84 (1980)).

The "law of the land" in this instance is the accrued cause of action in a tort action for negligence or other tort causes of action, and cannot be "altered, in substance, by any subsequent law." Thus, HB 1378's retroactive abolition of accrued causes of action is clearly unconstitutional, notwithstanding the attempted substitution of a different and much more burdensome administrative claims process, with a 30-day window for filing and a lower cap on damages. In conducting a retroactivity analysis, the court must determine whether the retroactive application of the statute or ordinance would *interfere* with vested rights. *Dua*, 370 Md, at 628 (*quoting Waters v. Montgomery County*, 337 Md. 15, 29 (1994) (*emphasis added*)). This means that the legislature cannot constitutionally bar or impair an accrued cause of action which, under prior law, was viable on the date the new statute was enacted. *Dua,* 370 Md. at 628.

The constitutional standard for determining the validity of retroactive civil legislation is whether vested rights are *impaired* and not whether the statute has a rational basis. *Dua,* 370 Md. at 628 (*emphasis added*). Even "a remedial or procedural statute may not be applied retroactively if it will *interfere* with vested or substantive rights." *Dua,* 370 Md. at 625 (*quoting Langston v. Riffe*, 359 Md. at 418 (*emphasis added*)).

The Legislature can establish time limitations on when existing causes of action may be brought, but it must "allow[] a reasonable time after its enactment for the assertion of an existing right or the enforcement of an existing obligation." *Dua*, 370 Md. at 635. As introduced, HB 1378 allowed for only two months to bring suit, with an effective date of October 1, 2025 and a bar date of January 1, 2026. As amended, HB 1378 would allow for only 30 days to file a claim after adoption of regulations for an alternative dispute resolution process, which would not permit a trial by jury. This is hardly reasonable, particularly given how overwhelmingly difficult it can be for survivors to come forward and seek justice through the courts.

Retroactive legislation also cannot impair a vested right by *limiting* the remedy. "[A]n act which divests a right through the instrumentality of the remedy and under the pretense of regulating it, is as objectionable as if the shaft was leveled directly at the right itself." *Id.* (*quoting Baugher, et al. v. Nelson*, 9 Gill 299, 309 (1850) (*emphasis added*)).

In *Prince George's Cnty. v. Longtin*, 419 Md. 450, 485 (2011), the Maryland Supreme Court held that the damages cap in the Local Government Tort Claims Act could not be constitutionally applied to a cause of action that had accrued before the effective date of the Act. So too here. The retroactive 55 percent reduction in the applicable damages cap in the amended version of HB 1378 (from $890,000 to $400,000) thus violates the vested rights of sexual abuse survivors.

In short, the Maryland Supreme Court has long held that Articles 19 and 24 of the

Maryland Declaration of Rights, and Article III, section 40 of the Maryland Constitution, preclude the Legislature from retroactively impairing or abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right. The General Assembly cannot take away the substantive rights of sexual abuse survivors in their accrued causes of action, including those it vested in survivors by the Child Victims Act.

Finally, HB 1378 would be a major retrenchment of the General Assembly's commitment to fairness in protecting the rights of child sexual abuse survivors, no matter the identity of their abuser. The populations likely to be affected by this bill, such as those in the juvenile justice system, are disproportionally represented by people from communities of color. In SFY2023, for example, Black youth, who represented 31% of Maryland's youth population, represented 63.5% of complaints, 79.3% of pretrial detention placements, and 78.5% of commitments in the state juvenile justice system.[1] Of course, disparate impact is not the intent of the proposed legislation, but it is an unavoidable effect of it. The General Assembly should continue, not impair, its historic commitment to survivors of child sexual abuse in the 2023 Child Victims Act, and reject HB 1378.

The Maryland Association for Justice urges an UNFAVORABLE Report on HB 1378

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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[1] *See* Maryland's Racial and Ethnic Disparities Plan for Federal Fiscal Year 2024, https://gocpp.maryland.gov/wp-content/uploads/Final-Draft-FY24-R_ED-Plan.pdf, at 5-8.

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A PLAINTIFF'S TRIAL FIRM

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April 4, 2025

Dear Members Of The Senate Judicial Proceedings Committee,

My name is Emily Malarkey. I am a trial lawyer and partner at the oldest plaintiffs' personal injury law firm in Maryland. We represent several hundred survivors of child sexual abuse in claims against public and private institutions. I am also a past President of the Maryland Association for Justice.

I urge an unfavorable report on HB 1378. In addition to serious concerns regarding the constitutionality of the bill and the draconian June 1st effective date (which will have a crippling effect on our circuit courts in the near future), I want to spend my written testimony sharing with you the practical effects of caps on damages, and how they work in the real world.

Sexual abuse cases are difficult to prove, very expensive, and take a long time to prosecute. A survivor cannot simply file a lawsuit and automatically get a settlement check. We have to prove not only that the abuse occurred, but that the institution knew that the abuser was perpetrating the abuse, and failed to act to protect the survivor.

Proving liability on the part of institution, whether public or private, requires hiring private investigators to track down witnesses, trying to obtain decades-old documents, hiring experts to testify about safety and prevention standards that applied a long time ago, and other costly and time-intensive work. In addition to time, proving liability involves incurring costs that easily exceeds tens of thousands of dollars per case.

The reality is that no tortfeasor actually pays the cap to settle the case. To earn a recovery of the cap, the case actually has to be tried in court, and a jury has to award the full value of the cap (or more). If our clients want to settle – which most do, given the highly private and sensitive nature of their claims – they have no choice but to settle for less than the cap. Out of that total recovery is deducted the case expenses and an attorneys' fee.

Because recovery of the full damages cap is thus in reality hardly ever attained, the effect of slashing the cap from $1.5 million to $400,000 or $700,000

is to place a **much lower ceiling** on the recovery the vast majority of survivors will receive. This is simply not fair, and does not do justice to the life-altering trauma sexual abuse survivors have endured.

Finally, I want to point out several other manners in which this bill is unprecedented in Maryland law as it relates to claims against private actors. First, the damages cap unfortunately limits not only pain and suffering damages (non-economic damages), but all damages, including reimbursement for all past counseling, the cost of future counseling, and lost income. **There is no other place in Maryland law where there is a global cap on all damages against private actors.** In other tort cases, a claimant can recover the full value of their economic losses, plus an amount for non-economic damages.

In addition, passage of the $700,000 cap for private actors would make that the **lowest cap on damages that exists in Maryland law against any private actor**. It would send a message to survivors of child sexual abuse that their claims are worth less than the claims of other injured individuals (such as those hurt in automobile collisions or in a slip and fall).

Finally, there is no other place in Maryland law where attorneys' fees are limited for cases against private companies. Not only is this an unfair limitation on the freedom to contract, but limiting attorneys' fees causes an access to justice problem. Law firms like mine may be able to take an occasional case on a reduced attorneys' fee, it is not economically feasible for local firms like mine to pursue these challenging and time-consuming cases on a reduced fee. The practical effect of a cap on attorneys' fees thus makes it difficult or impossible for survivors to obtained skilled representation.

I urge you to vote NO to HB1378.

Sincerely,

Emily C. Malarkey