

Testimony Before the Maryland House Judiciary Committee  
in Opposition to H.B. 456,  
A Bill That Would Revive Additional Time-Barred Claims  
Cary Silverman on Behalf of the American Tort Reform Association  
February 13, 2025

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On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to testify today. ATRA opposes H.B. 456's retroactive application, which would revive claims that have long expired under the applicable statute of limitations. This bill's reviver provision (Section 2) continues down an unsound path, which undermines the stability, accuracy, and fairness of the state's civil justice system.

ATRA is a broad-based coalition of businesses, municipalities, associations, and professional firms that share the goal of having a fair, balanced, and predictable civil justice system. I am a Maryland resident, a member of the Maryland Bar, and a partner in the Washington, D.C. office of Shook, Hardy & Bacon L.L.P. I testified before this Committee when it considered legislation that revived time-barred childhood sexual abuse claims.

Retroactively changing laws and reviving time-barred claims undermines the ability of Maryland's citizens and businesses to rely on the law. In this instance, the bill subjects a broad range of organizations that interact with children to liability exposure stemming from their hiring and supervision of employees or volunteers, or based on the adequacy of their policies and practices for uncovering abuse, decades ago. They will no longer have records of what they did or did not do from so many years ago. They will be unable to defend themselves from claims alleging they could or should have done something more that might have prevented or stopped child abuse or neglect.

Statutes of limitations are an essential element of a properly functioning civil justice system. They advance important public policies. They encourage those who are harmed to come forward without delay. They promote accuracy in liability determinations by allowing judges and juries to decide cases when the best evidence is available—before witnesses and records are gone, and while memories are fresh. They provide finality and certainty, ending liability exposure after a certain amount of time.

The legislature may find that some types of civil actions should have longer statutes of limitations than others. Changes should be made prospectively, giving notice to organizations that make decisions based upon them such as when they set record retention policies, purchase insurance, and even decide whether to offer a product or service in Maryland given the level of liability exposure involved.

When this Committee considered the Child Victim Act (CVA), ATRA expressed concern about the slippery slope that the General Assembly would set out upon by reviving time-barred childhood sexual abuse claims because the tort system, by its nature, often involves tragic injuries. Now, before the ink has dried on the Maryland Supreme Court's 4-3 decision upholding the CVA's reviver—just 10 days later—the Committee is heading down that slope.

H.B. 456 would revive a new group of claims alleging that organizations negligently failed to prevent child neglect or physical or emotional harm that adults today experienced when they were children. If the General Assembly enacts this law, I

expect next year there will be a bill to revive the claims of individuals who could not sue under the CVA or this bill because they were 19 or 20 years old at the time. And the following year, the Committee may be asked to revive claims seeking damages for other longstanding unresolved wrongs in any number of areas. This undermines the very purpose of statutes of limitations.

When the Maryland Supreme Court upheld the CVA's reviver, it did so under the impression that "it is extremely rare, perhaps unprecedented, for [the General Assembly] to retroactively eliminate [a statute of limitations]."<sup>1</sup> Given the "serious implications for the fairness of cases in which defendants may lack access to evidence to access the claims against them or mount a defense," the Court said "it is reasonable to expect the General Assembly to tread very carefully when considering the retroactive application of an expansion or elimination of a statute of limitations. . . ."<sup>2</sup> Yet, here we are again.

The Committee should also keep in mind that defending decades-old claims will not only be impossible for the wide range of organizations that will be named as defendants, the cost will be enormous. Consider that as a result of the CVA's reviver, state entities in Maryland are facing 3,500 lawsuits (so far),<sup>3</sup> with claims dating back as far back as the 1960s.<sup>4</sup> This amounts to \$3 billion in liability exposure for the state alone—and that is with an \$890,000 cap on total damages for public entities contained in that (and this) bill.<sup>5</sup> Already, the General Assembly, which is facing a budget gap, has been called upon to allocate funds to cover settlements from these lawsuits.<sup>6</sup> And, recognizing the strain revived claims have caused the state, last week, legislation was introduced that would stop victims from filing any more revived CVA action against state government entities as of January 1, 2026 (H.B. 1378).

Now imagine the sudden liability exposure that H.B. 456, which revives claims alleging any conduct that could be viewed as neglect or physical or emotional abuse, going back indefinitely, will place not only on state entities, but many youth-serving organizations in Maryland that don't have the benefit of this damage cap<sup>7</sup> and will also not be able to fairly respond to such old claims.

Thank you for considering our concerns. We respectfully ask that you not favorably report this bill.

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<sup>1</sup> *Roman Catholic Archbishop of Washington v. Doe*, Sept. Term 2024, at 30 (Md. Feb. 3, 2025).

<sup>2</sup> *Id.*

<sup>3</sup> Department of Legislative Services, Office of Policy Analysis, *Fiscal Briefing* at 11 (Jan. 2025).

<sup>4</sup> Hannah Gaskill, *Child Victims Act Settlements Could Cost Maryland Over \$3 Billion: 'A Potentially Enormous Liability for the State'*, Baltimore Sun, Jan. 21, 2025.

<sup>5</sup> *Id.*

<sup>6</sup> *Fiscal Briefing*, *supra*, at 11; see also Bryan P. Sears, *Legislators Warned of 'Enormous Liability' Related to Sex Abuse Lawsuits*, Maryland Matters, Jan. 20, 2025 (quoting a budget analyst as informing the appropriations committees that "it's very possible that there will be a settlement reached before the end of session, and you all may be asked to find the money to make the first settlement payment, which could very easily be in the hundreds of millions of dollars").

<sup>7</sup> H.B. 456's \$1.5 million cap on noneconomic damages in revived claims against private entities is not actually a limit on liability, it is an expansion. Maryland currently has an inflation-adjusted \$950,000 limit on noneconomic damages that applies in all personal injury actions, including those covered by this legislation. Md. Cts. & Jud. Code Ann. § 11-108(b). Thus, the \$1.5 million cap in the bill actually proposes a 50%-plus increase in liability. In addition, while the legislation caps the *total* liability of state entities at \$890,000 for revived and future claims, the limit applicable to private entities applies only to the portion of the award for *noneconomic* damages in revived actions.