

**MARYLAND**



**CHILD SEXUAL ABUSE  
&  
THE CHILD VICTIMS ACT OF 2023**

**SENATE JUDICIAL PROCEEDINGS COMMITTEE BRIEFING**

**JANUARY 19, 2023**

**Claudia Remington, JD, Co-Chair**

# MARYLAND



- Statewide collective impact initiative – grew out of SCCAN’s Prevention Workgroup
- public and private agencies and individuals from across sectors and the state
- receives technical assistance from the U.S. Centers for Disease Control
- Overall vision:
  - Promote *safe, stable, nurturing relationships and environments* for all of Maryland’s children 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).
  - Prevent & mitigate child maltreatment and other adverse childhood experiences .
- Focuses on the latest developments in developmental science (NEAR science): neurobiology , epigenetics, ACEs, and resilience to advance this vision.

# JUSTICE 4 MD SURVIVORS

PROTECT KIDS, NOT PREDATORS

THE CHILD PROTECTION ACT OF 2023



# TODAY'S AGENDA



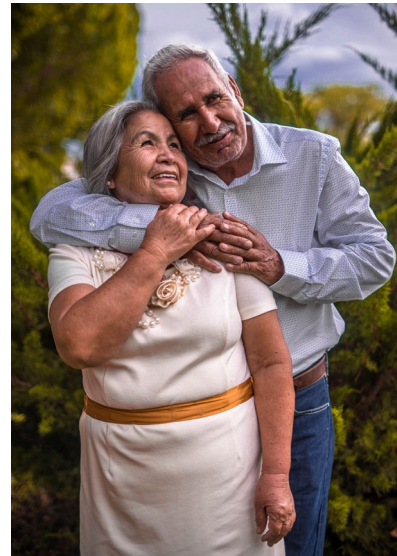
Child Sexual Abuse Numbers & Impact of Trauma



Public Policy: How we protect kids & give survivors justice



Legislative history & Constitutional discussions







## CSA IMPACTS FOR VICTIMS:

Brain Science teaches us about the impacts of trauma on children.

Victims have increased risks for physical & mental health issues.

Victims have increased risks for interpersonal struggles & risk taking behaviors

Generational trauma impacts victim's children & grandchildren.







## CSA IMPACTS ON SOCIETY:

Law Enforcement

Educational System

Healthcare

Substance Abuse

Mental Health

Social Services

Workforce







## INSTITUTIONAL BETRAYAL: DARVO

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Deny

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Attack

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Reverse Victim and  
Offender



# SURVIVORS VOICES ARE CLEAR:



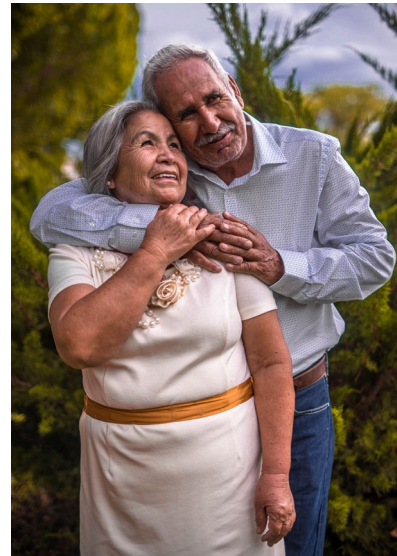
Keep kids safe



Hold abusers  
accountable



Access to justice



# Impact of Child Sexual Abuse

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Wendy G. Lane, MD, MPH

Chair, SCCAN

Co-Chair, Child Maltreatment &  
Foster Care Committee - MDAAP

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

Maryland Chapter





# Outline

- **How common is Child Sexual Abuse?**
- **Physiologic effects**
- **Health effects**
- **What prevents children from disclosing?**



# How Common is Child Sexual Abuse?

## New Victims - 2020

### United States

- 57,963 children
- 1.1 case / 1000 US children
- 8% of all US maltreatment

### Maryland

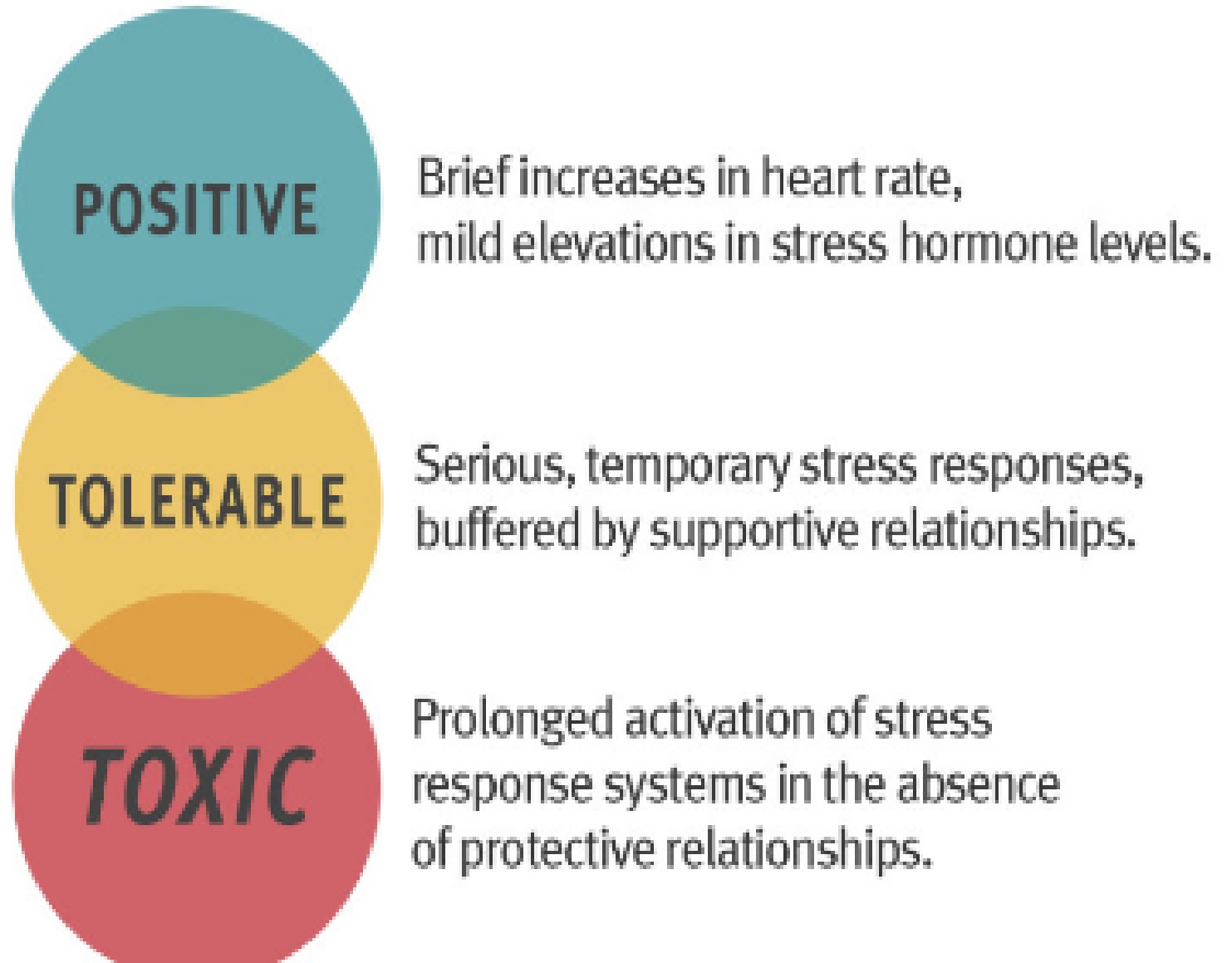
- 2,059 children
- 1.5 cases / 1000 MD children
- 26.5% of all MD maltreatment

## Lifetime Risk

**19% of women; 9% of men abused as children**

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# Toxic Stress



- 
- <http://developingchild.harvard.edu/science/key-concepts/toxic-stress/>



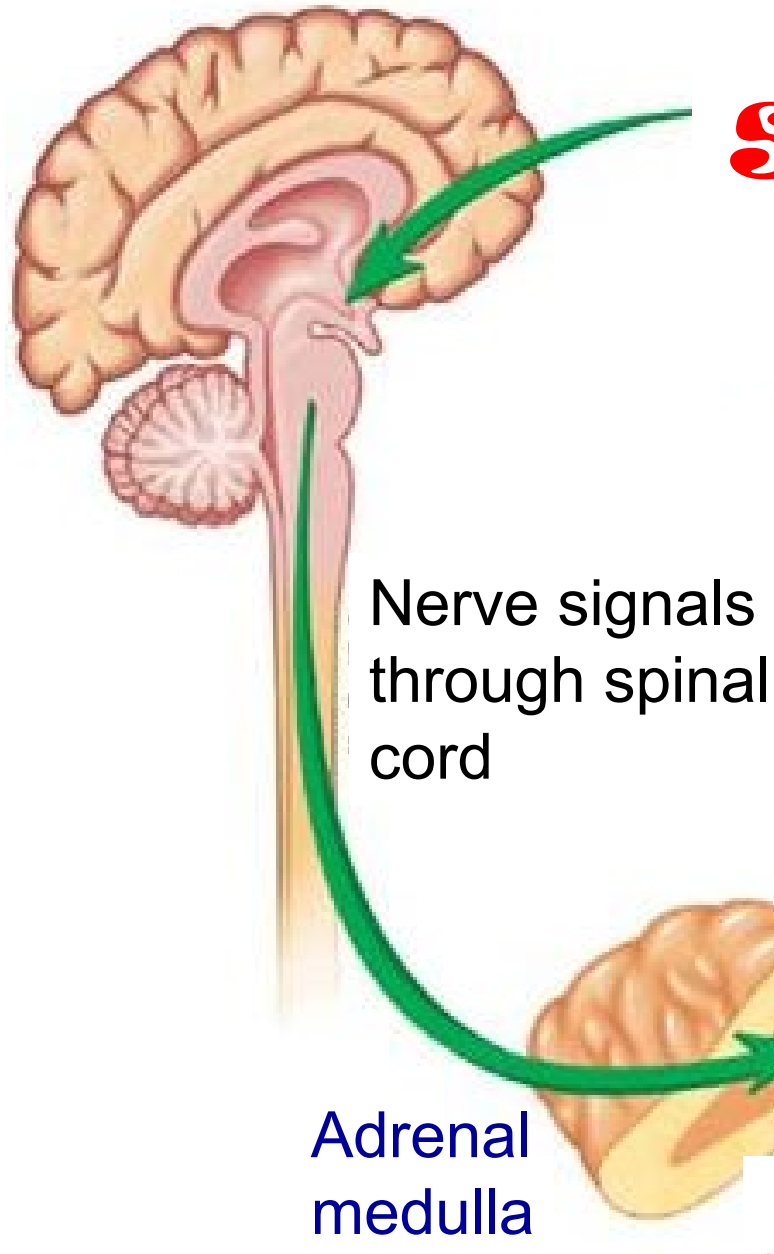
# Biologic Response to Stress

- **Activation of physiologic stress-response systems**
- **Hypothalamic-Pituitary-Adrenocortical (HPA)**
- **Sympathetic-Adrenal-Medullary (SAM)**
- **Prolonged or repeated activation →**
  - **Physical disorders**
  - **Psychiatric/psychological disorders**

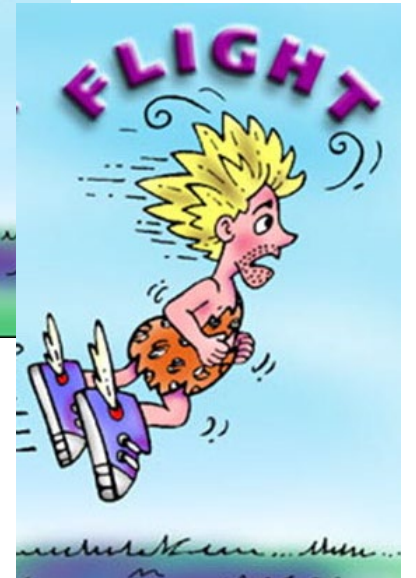


# Sympathetic – Adrenal – Medullary System

**Stress**



Epinephrine  
Norepinephrine



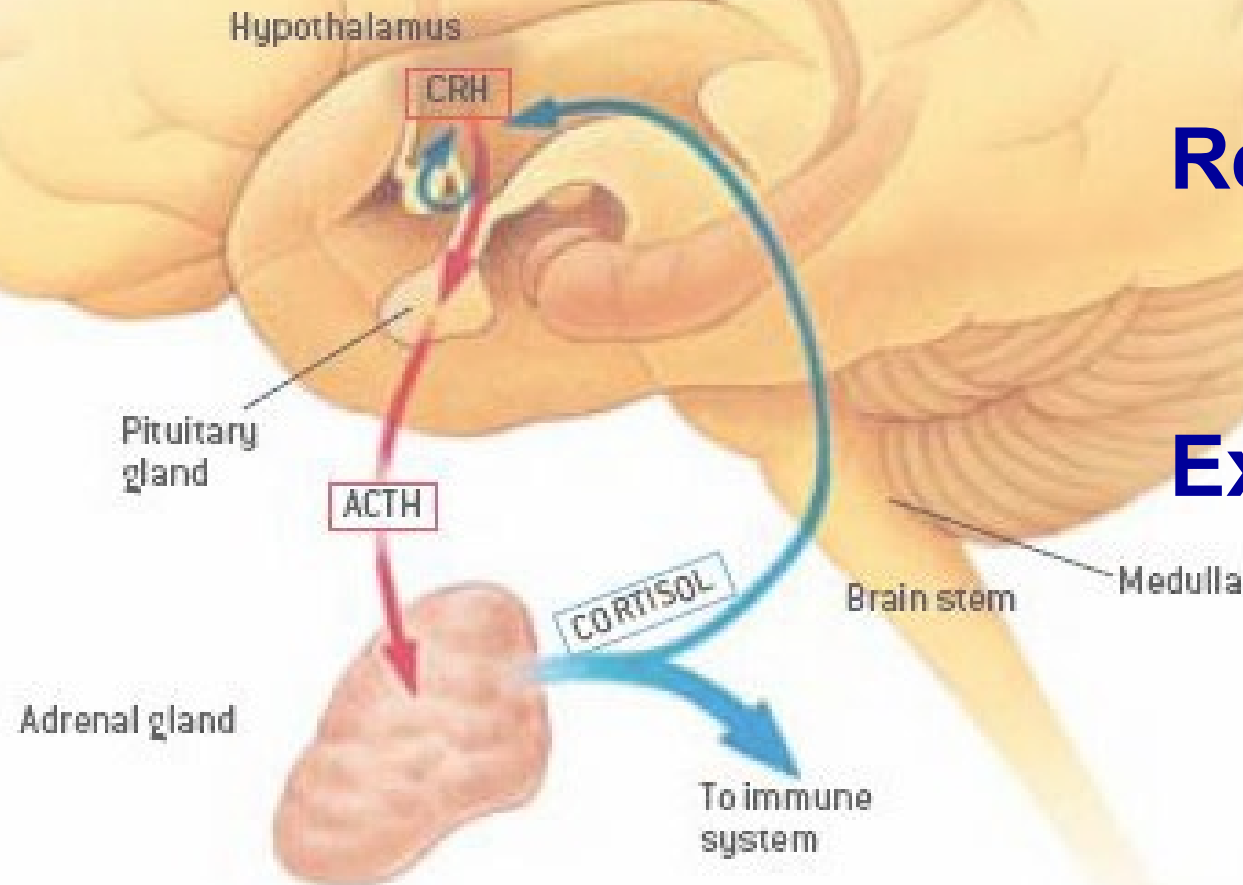
# STRESS RESPONSE SYSTEM

## HPA Axis

**Alarm Stage** – Increased  
Hormone secretion

**Resistance** – adaptation  
High, stable output

**Exhaustion** - overwhelmed





# Sexual Abuse and Overall Health

- Association between sexual abuse and:
- Poorer overall health
- Increased chronic disease
- Greater functional limitation
- Association persists even after controlling for depression (Golding, et al, 1997)



# Sexual Abuse and Mental Health

**3.5X ↑ risk for mental health disorder**

Increased risk for:

- Depression
- Anxiety
- Bipolar
- Psychosis
- OCD
- Suicidal ideation

Hogg, European Archives of Psychiatry & Clinical Neuroscience, 2022;  
Ferguson, Child Abuse & Neglect 2013



# Sexual Abuse & Substance Use Disorder

- 1.73x increased risk of substance abuse
- Increased risk for:
  - Poly-substance abuse in teen girls
  - Opioid misuse during pregnancy
  - Alcohol misuse among MSM

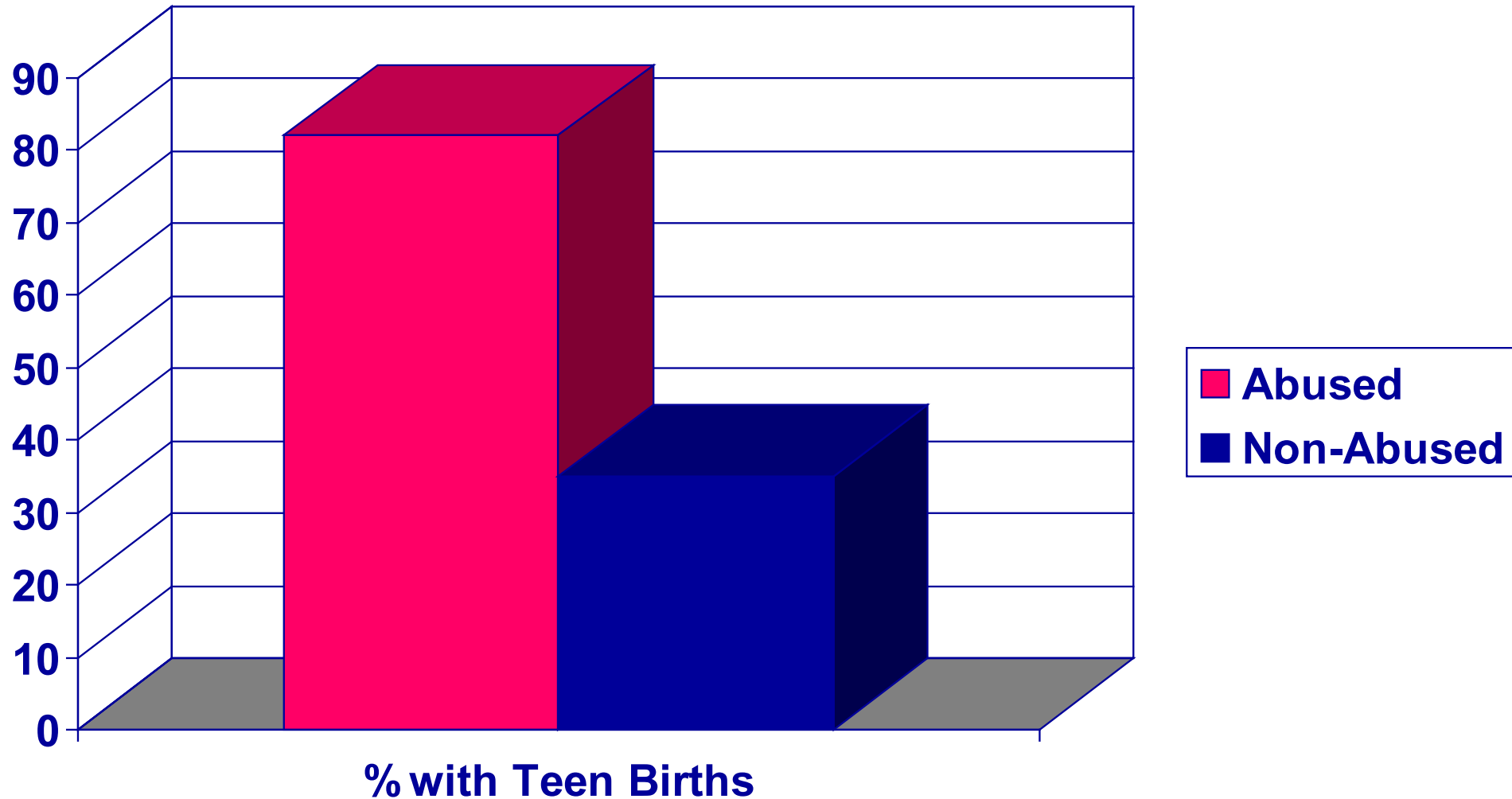
# Sexual Abuse and Eating Disorders –

Odds of Disorder compared to those with no CSA

# of CSA Reports	Binge Eating	Purging	Overconcern re: weight
1	1.9	1.7	1.2
≥2	3.0	4.4	1.7

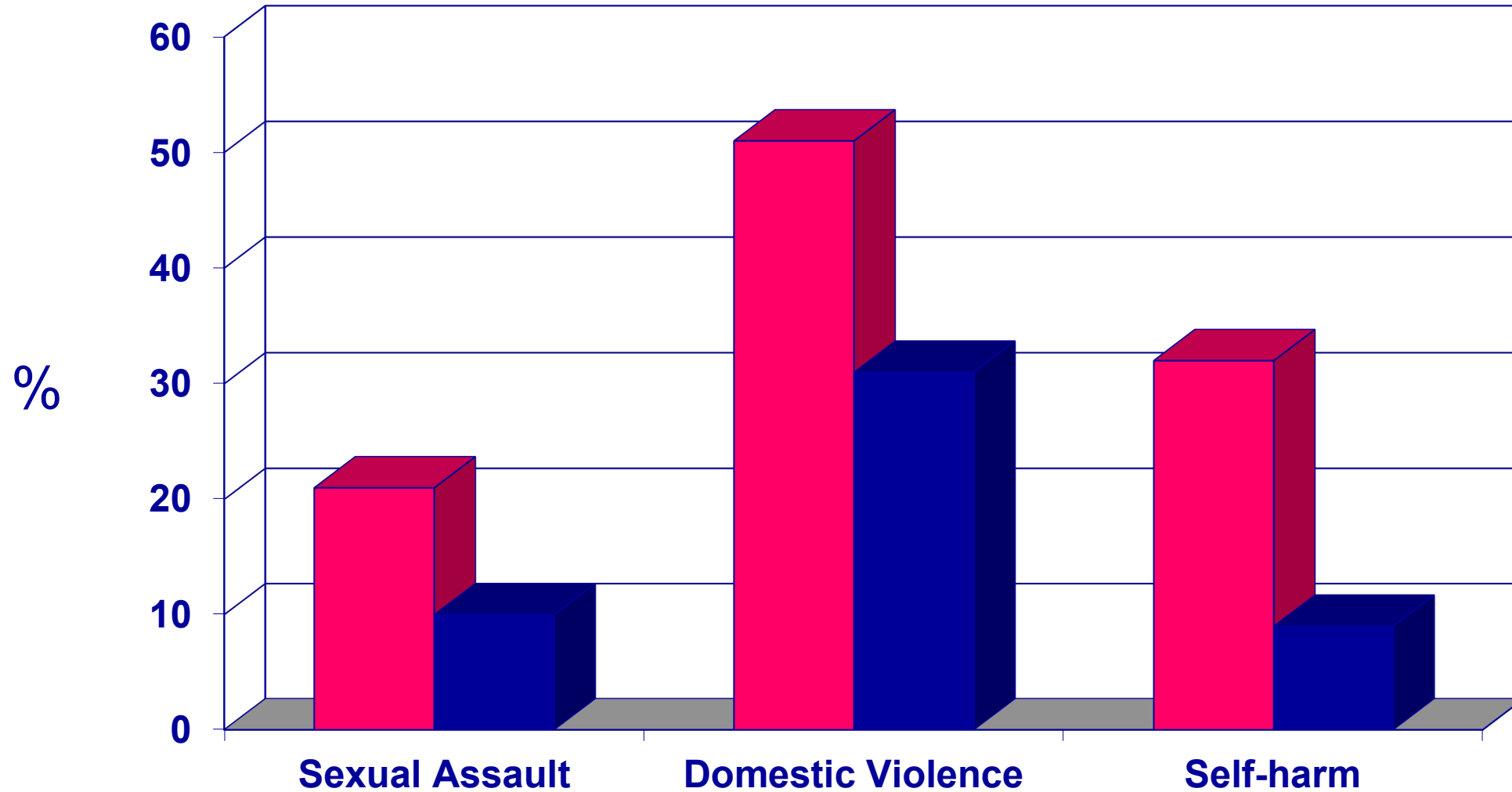


# Sexual Abuse and Teen Pregnancy



Noll, et al J Consulting Clin Psychol 2003.

# Revictimization



■ **Abused**    ■ **Non-Abused**

Noll, et al. J Interpersonal Violence, 2003



# **Sexual Abuse and Healthcare Costs**

**Higher healthcare costs**

**More doctor visits**

**More surgery**

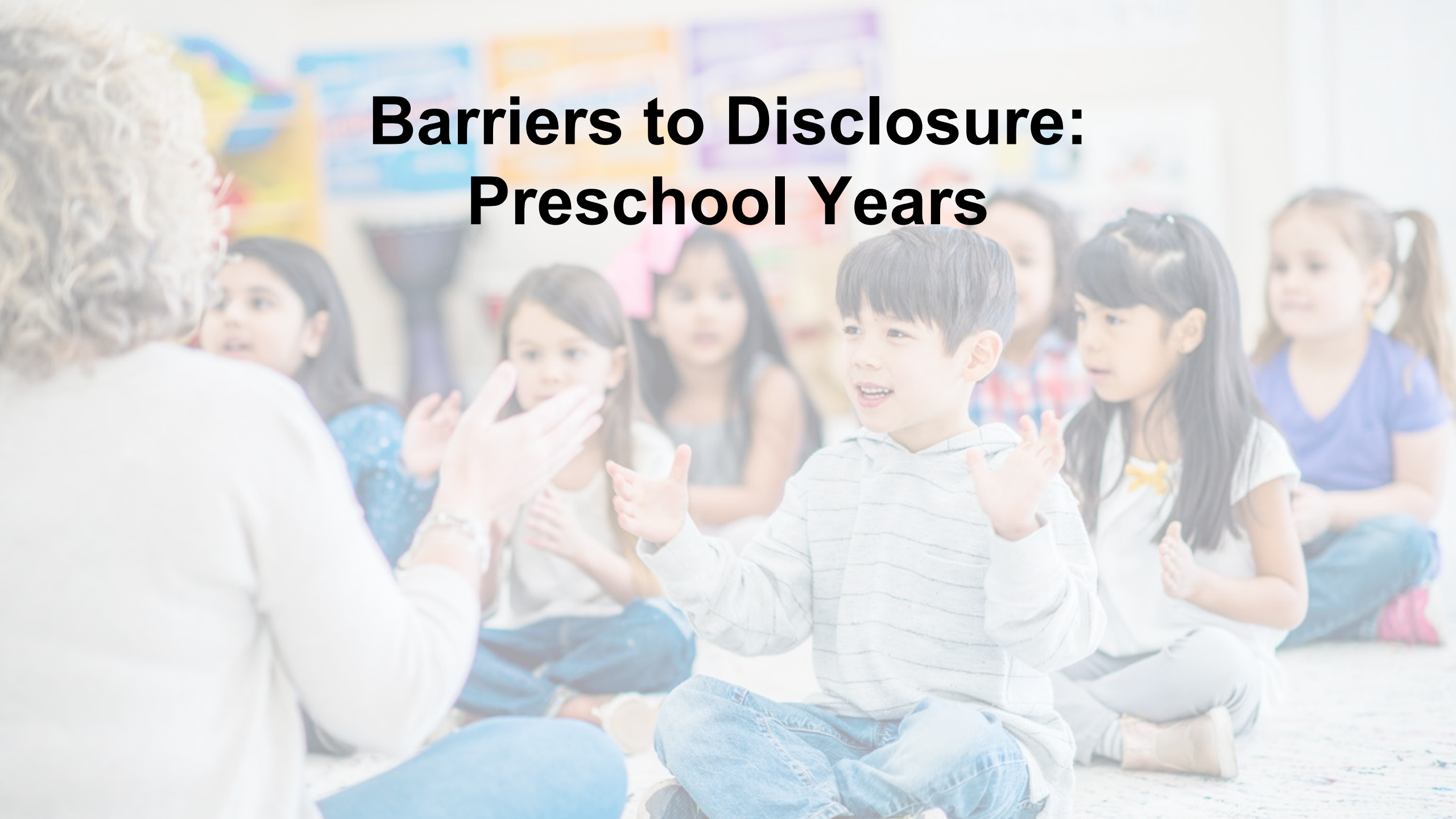
**More hospitalizations**

# Barriers to Disclosure: Toddlers





# **Barriers to Disclosure: Preschool Years**



A group of young girls, likely a soccer team, are standing on a grassy field. They are wearing white jerseys with light blue accents and numbers. The girl in the foreground is looking directly at the camera with a serious expression. Other girls are visible in the background, slightly out of focus. The background shows a clear sky and some trees.

# **Barriers to Disclosure: School Age Children**



# Barriers to Disclosure: Teens



A blurred background of a medical office desk. In the foreground, there is a clipboard with a pen, a stethoscope, and some papers. The text is overlaid on this background.

**Thank you!**

**[Wlane@som.umaryland.edu](mailto:Wlane@som.umaryland.edu)**

**[Wlane@lifebridgehealth.org](mailto:Wlane@lifebridgehealth.org)**





**Kathryn Robb, Esq.**

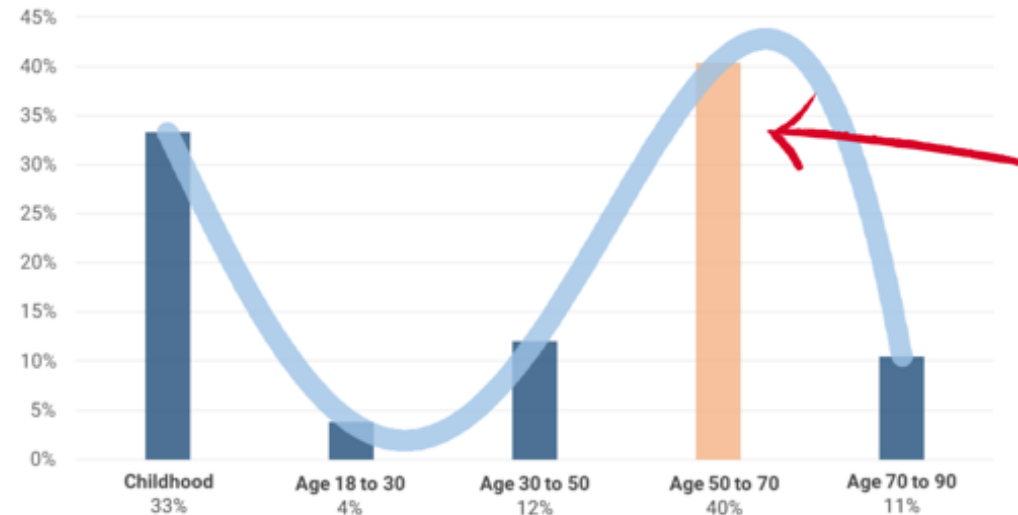
Executive Director, CHILD USAAdvocacy

## DELAYED DISCLOSURE OF CHILD SEXUAL ABUSE

© CHILD USA  
February 2022

Delayed disclosure is the phenomenon common to survivors of child sex abuse where individuals wait for years, often well into adulthood, before telling anyone they were abused.

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



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

**Over half** of survivors first disclosed at **age 50 or older**

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



A close-up, high-contrast photograph of a person's face, focusing on their eyes. The person has light-colored eyes and is looking slightly to the side with a somber or distressed expression. The lighting is dramatic, with deep shadows and bright highlights on the skin.

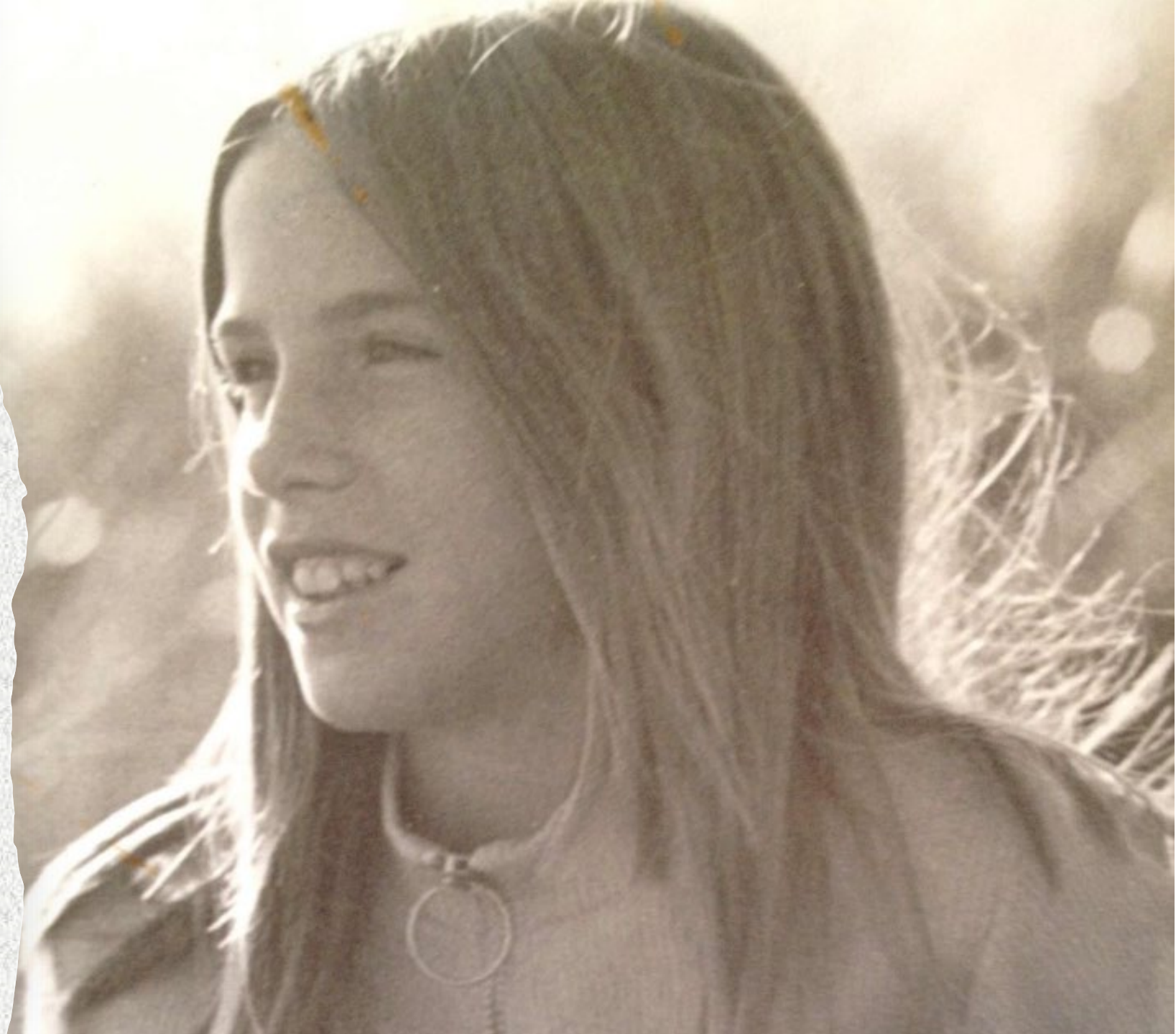
# DELAYED DISCLOSURE

Why do victims of child sexual abuse take so long to speak?

Because the abusers and careless institutions bury children alive - in a tomb of heavy shame, anxiety, fear and deep trauma.

It takes decades to break free.

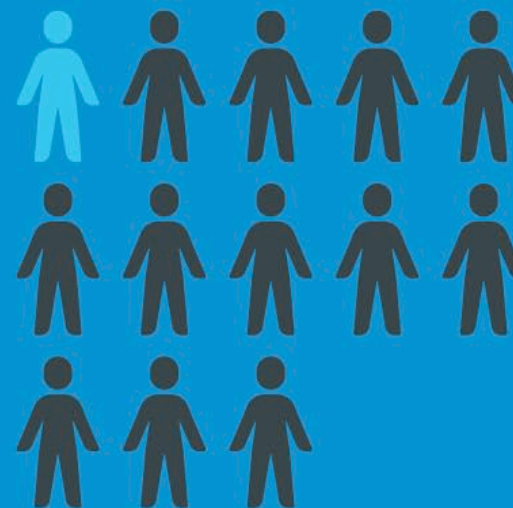
I know, because I  
am one of them.





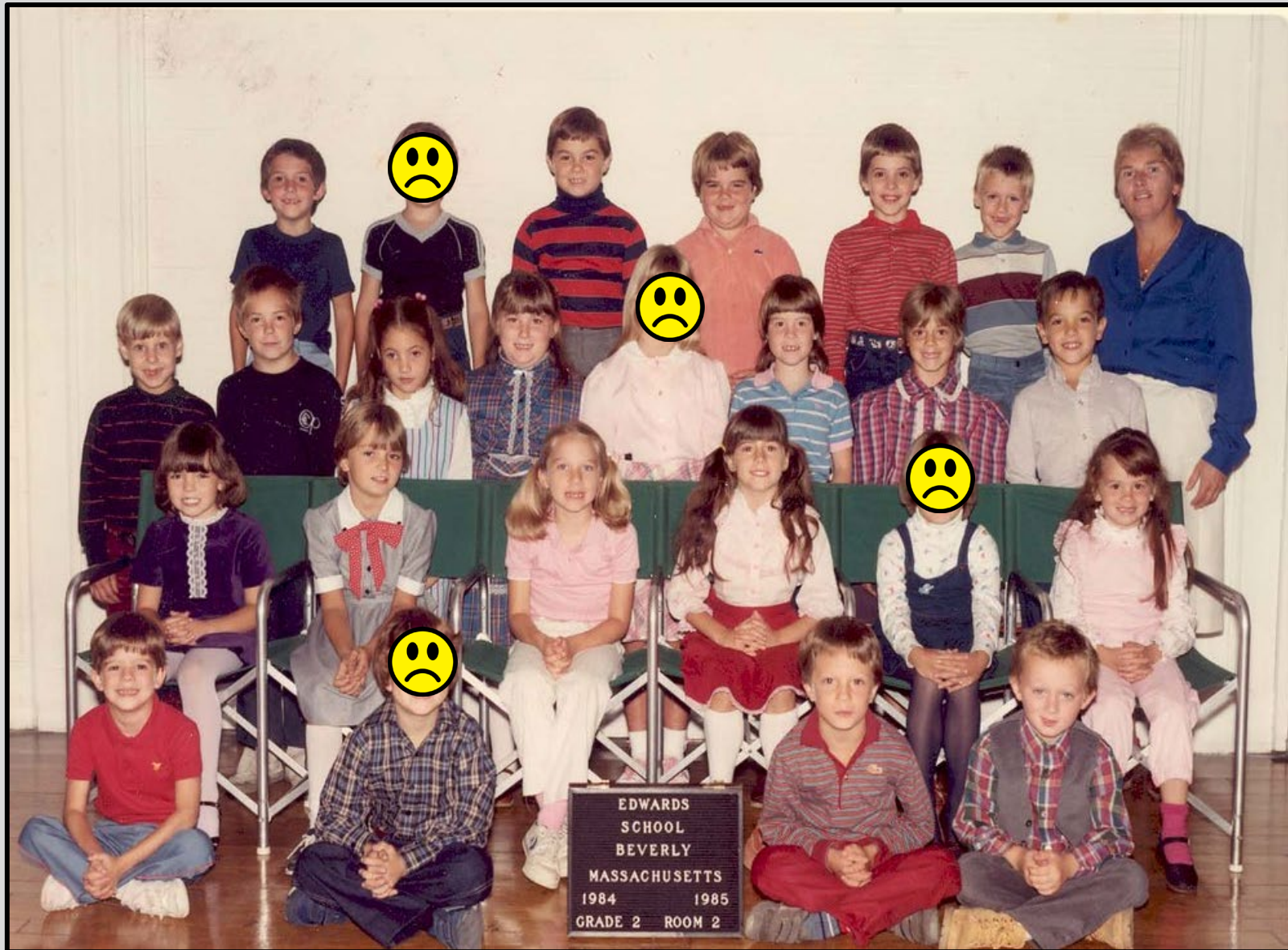


About one in  
five girls and  
one in 13 boys  
will be sexually  
abused before  
they turn 18\*



\*Includes contact abuse only  
Source: CHILD USA

That = 13.5% of all children





# HOW STATUTE OF LIMITATIONS REFORM HELPS MARYLAND



## **Identifies Hidden Child Predators and the Institutions that Endanger Children**

to the public, shielding other children from future abuse.



## **Punishes Bad Actors & Shifts the Cost of Abuse**

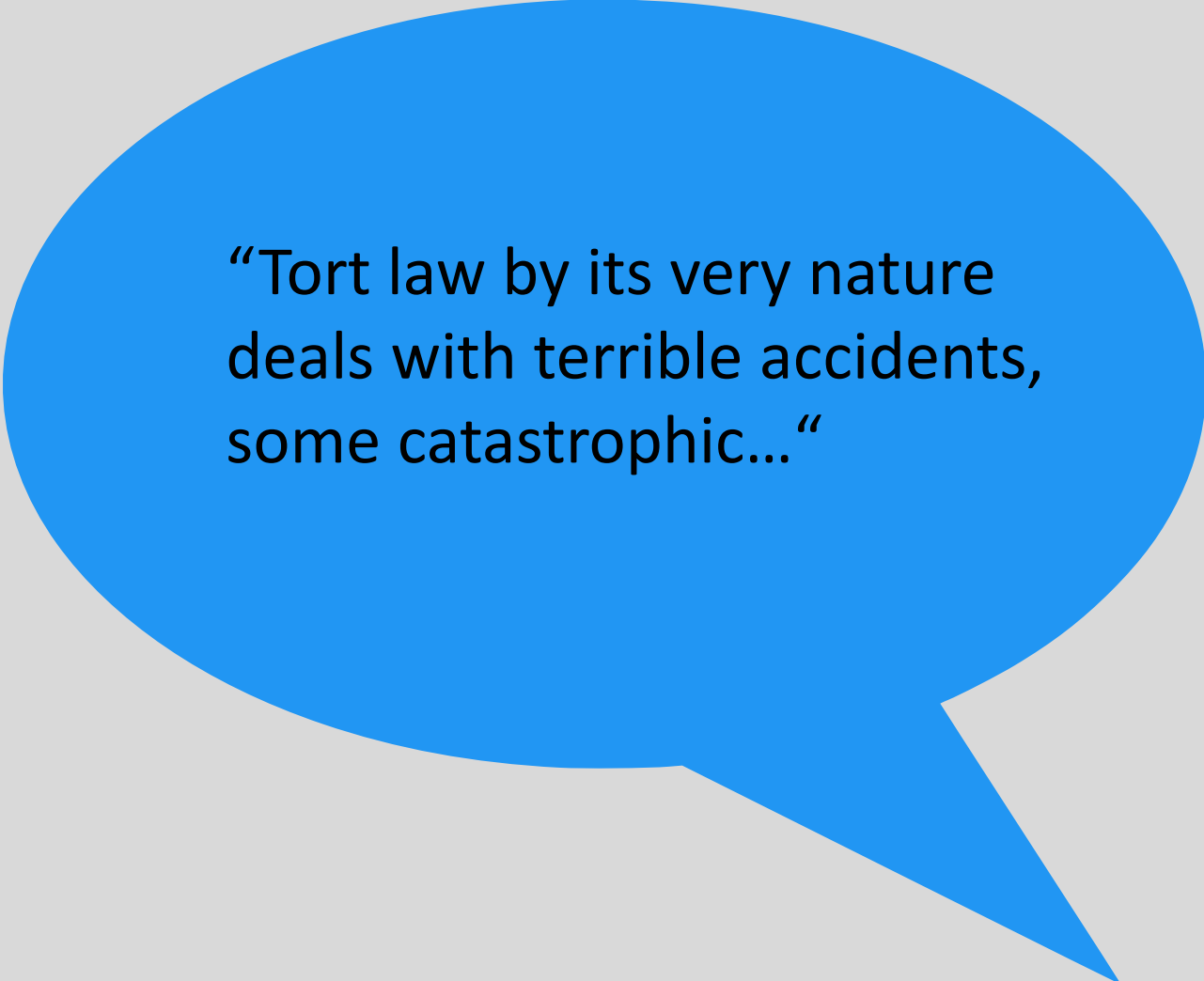
from the victims and taxpayers to those who caused it.



## **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.

You will likely hear:



“Tort law by its very nature deals with terrible accidents, some catastrophic...”



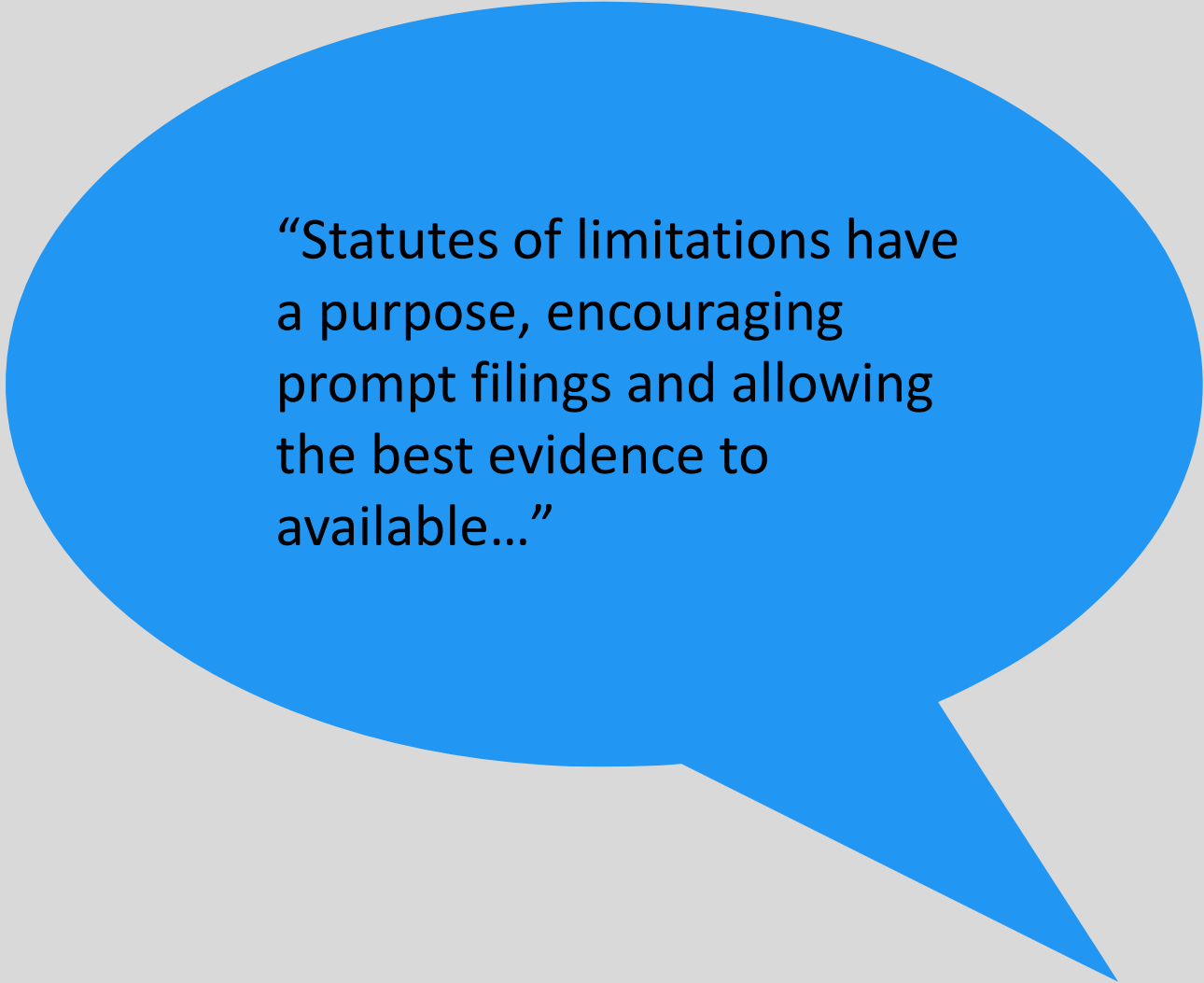
These Are NOT Typical  
Torts. These claims are  
NOT Accidents.



Let's be VERY clear.


We are talking about the  
rape, sodomy and sexual  
assault of children!

You may also hear:



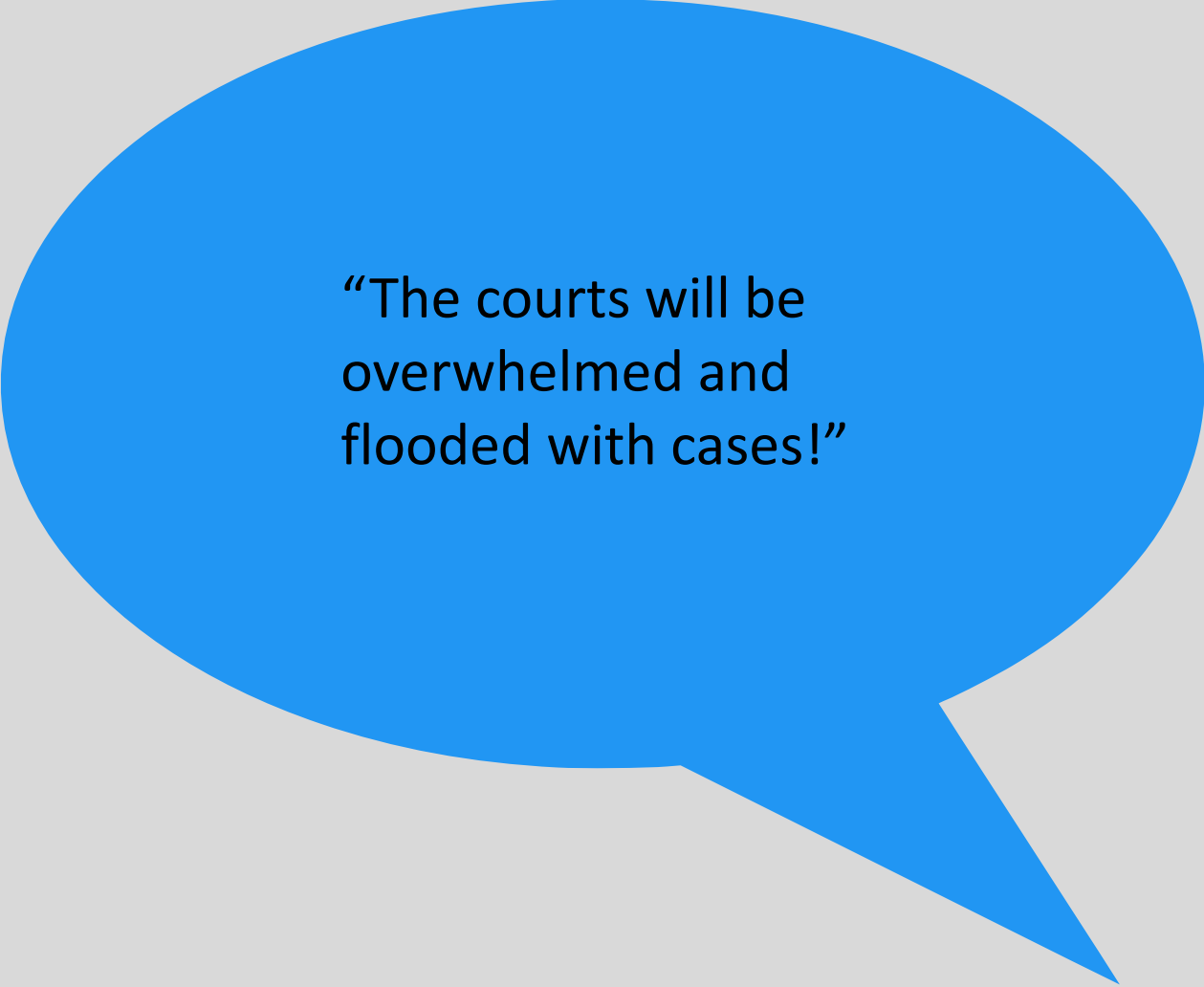
“Statutes of limitations have a purpose, encouraging prompt filings and allowing the best evidence to available...”





Should the law and our public policy reward sexual abusers and other bad actors  
for the very silence they cause in their victims?  
Do we let them benefit from the silence and frozen fear they create?  
Is that good public policy?

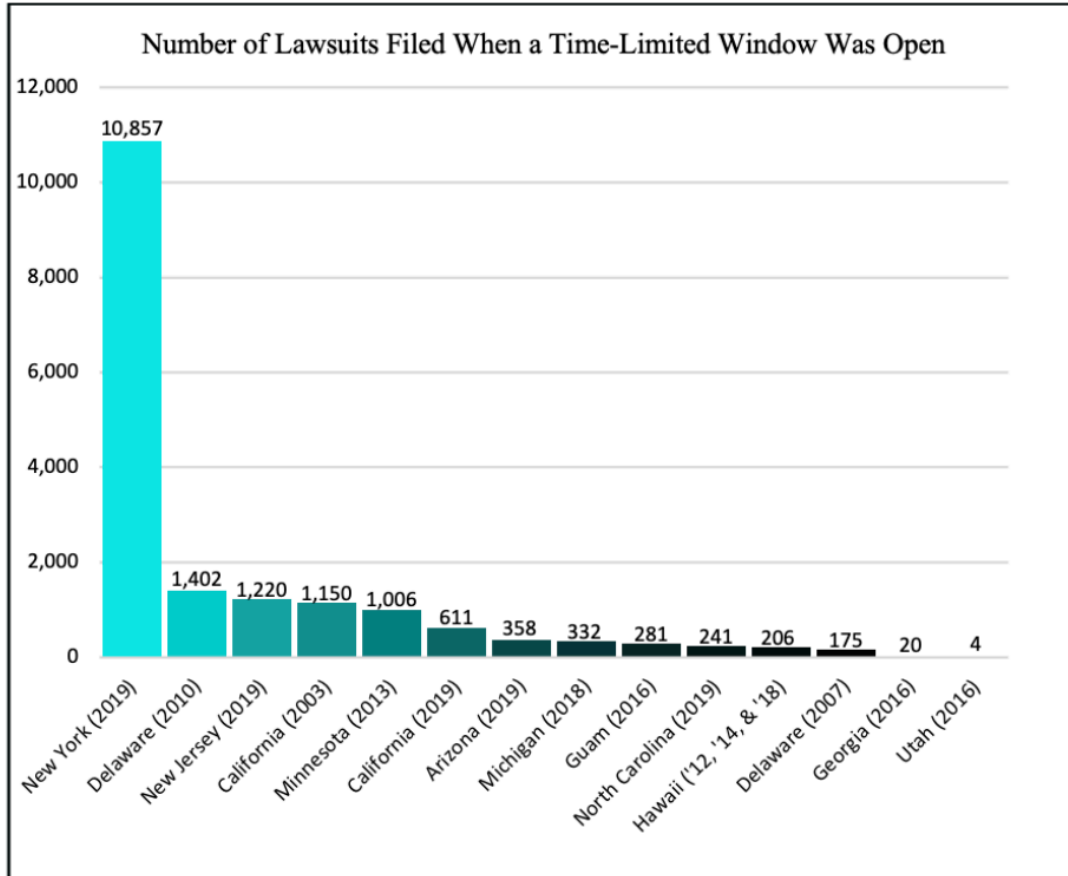
And you may hear “the sky is falling”  
statements like:



“The courts will be  
overwhelmed and  
flooded with cases!”

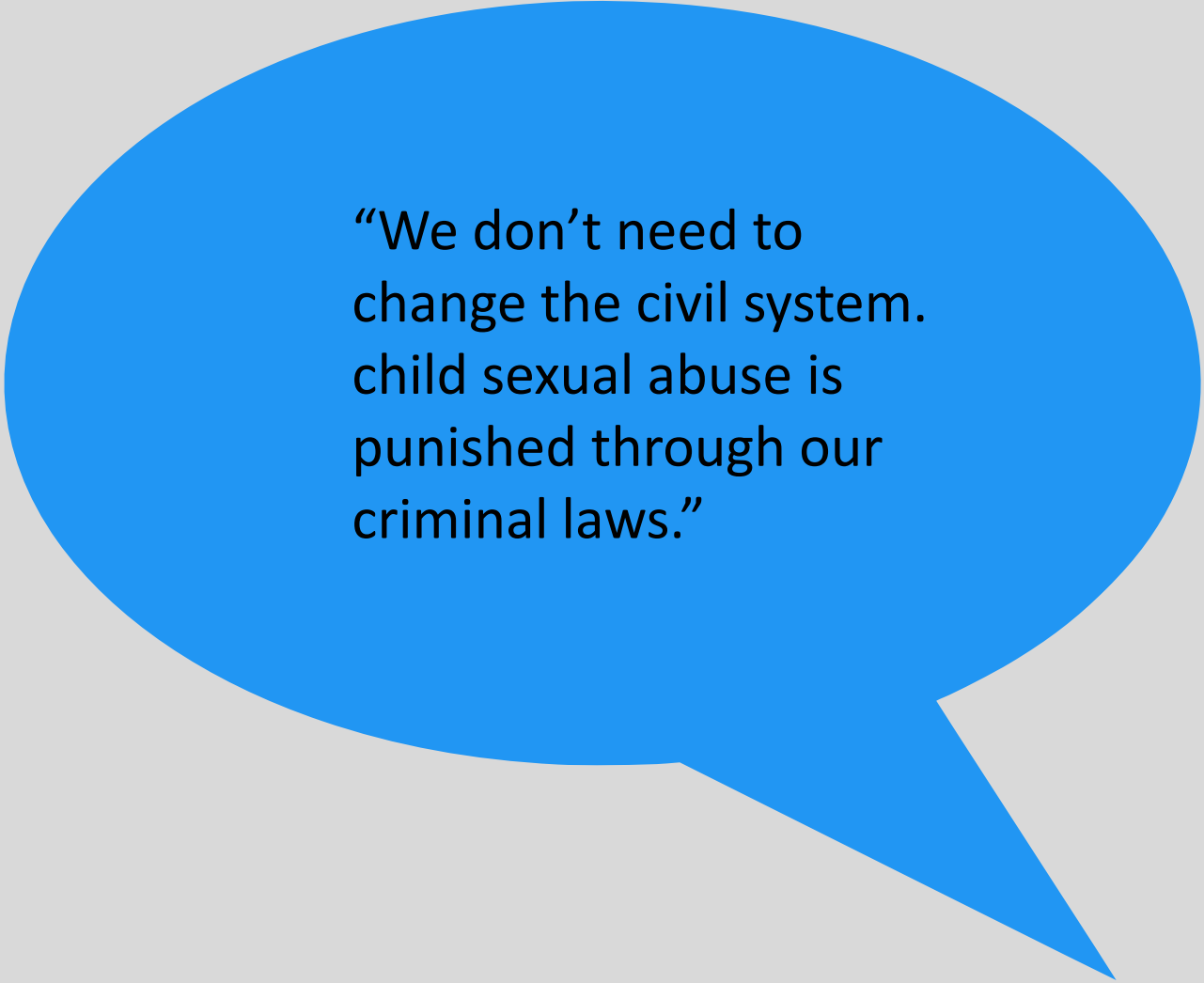


# Nope!



State	Year	Population	Number of lawsuits filed	Percent of population that filed lawsuits under revival window
Arizona	2020	7,151,502	358	0.01%
California	2003	35,484,453	1,150	0.003%
Delaware	2011	907,381	1,402	0.15%
Delaware	2008	876,794	175	0.02%
Georgia	2016	10,300,000	20	0.0002%
Hawaii	2018	1,421,000	206	0.01%
Michigan	2018	9,984,000	332	0.003%
Minnesota	2016	5,523,000	1,006	0.02%
New Jersey	2021	9,267,130	1,220	0.01%
New York	2021	19,800,000	10,857	0.05%
N. Carolina	2021	10,550,000	241	0.002%
Utah	2019	3,206,000	4	0.0001%

And you may hear:



“We don’t need to  
change the civil system.  
child sexual abuse is  
punished through our  
criminal laws.”

No.

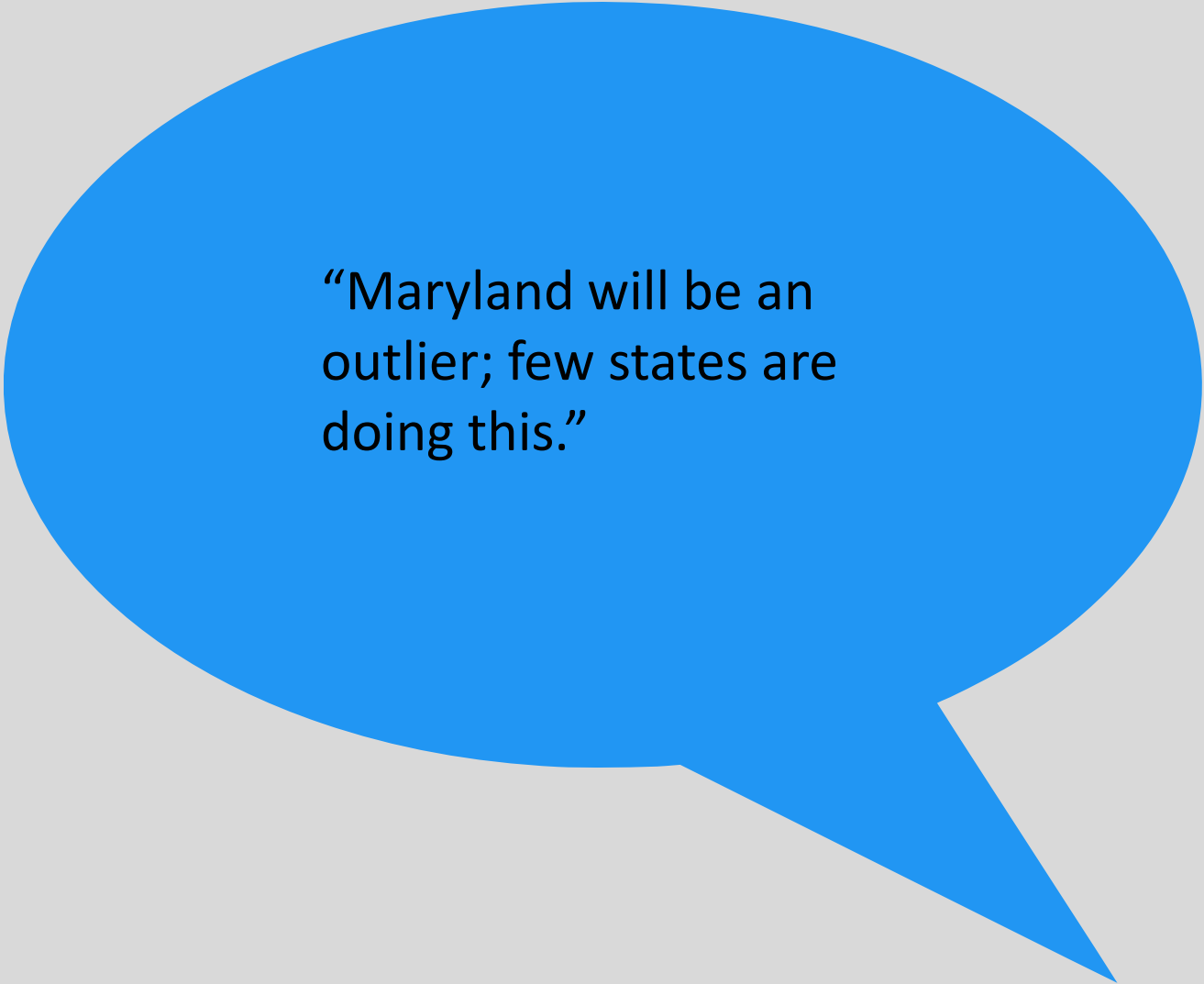
The majority of  
Child Sexual Abuse  
claims never get  
prosecuted.





ISSUE	CRIMINAL SYSTEM	CIVIL SYSTEM
Burden of Proof	Beyond a reasonable doubt. Few CSA crimes go forward to prosecution <i>Fewer than 20% of sexual crimes are referred to prosecution, only ½ result in a conviction</i>	Preponderance of the Evidence
Power & Voice of Victims	-Victims have little voice. State's Attorneys are the decision makers, may decline to go forward for bandwidth, staffing & cost issues -Past criminal laws were weak, gender-limiting, and ineffective. They failed to encompass the true facts of child sexual abuse, rape, and sodomy.	Victims are parties and have power and voice.
Penalties	Institutions do not go to jail	Civil justice holds institutions and predators accountable. It exposes hidden predators & forces institutions to have better policies
Discovery	Limited discovery	Full discovery
Revival	Cannot revive <u>Stogner v. California</u>	Civil SOL laws can be revived, thereby exposing dangerous child sexual abusers
Financial burden	Cost of arresting, prosecuting & incarcerating sexual abusers falls on the state. The financial burdens of CSA fall on MD – social services, medical, educational, law enforcement, etc.	The sexual predators and institutions that fail to protect children pay for the cost of abuse and damages.
Insurance Co.	Non-parties	Can be on the right side of history on this issue by requiring better standards and practices, annual audits and increased premiums

You may also hear:



“Maryland will be an outlier; few states are doing this.”



# Child Sex Abuse Statutes of Limitations Reform

50

U.S.  
Jurisdictions

## NO CRIMINAL SOL FOR SOME OR ALL CSA CRIMES

**44 States**, 5 Territories, and the Federal Government eliminated criminal SOLs  
No SOL in all except NV, NH, ND, OH, OK, OR & Puerto Rico

18

U.S.  
Jurisdictions

## NO CIVIL SOL FOR SOME OR ALL CSA CLAIMS

**15 States**, 2 Territories, and the Federal Government eliminated civil SOLs  
No SOL in AK, AZ, CO, CT, DE, FL, IL, LA, ME, MN, NE, NV, NH, UT, VT, Fed Gov, NMI, & Guam

27

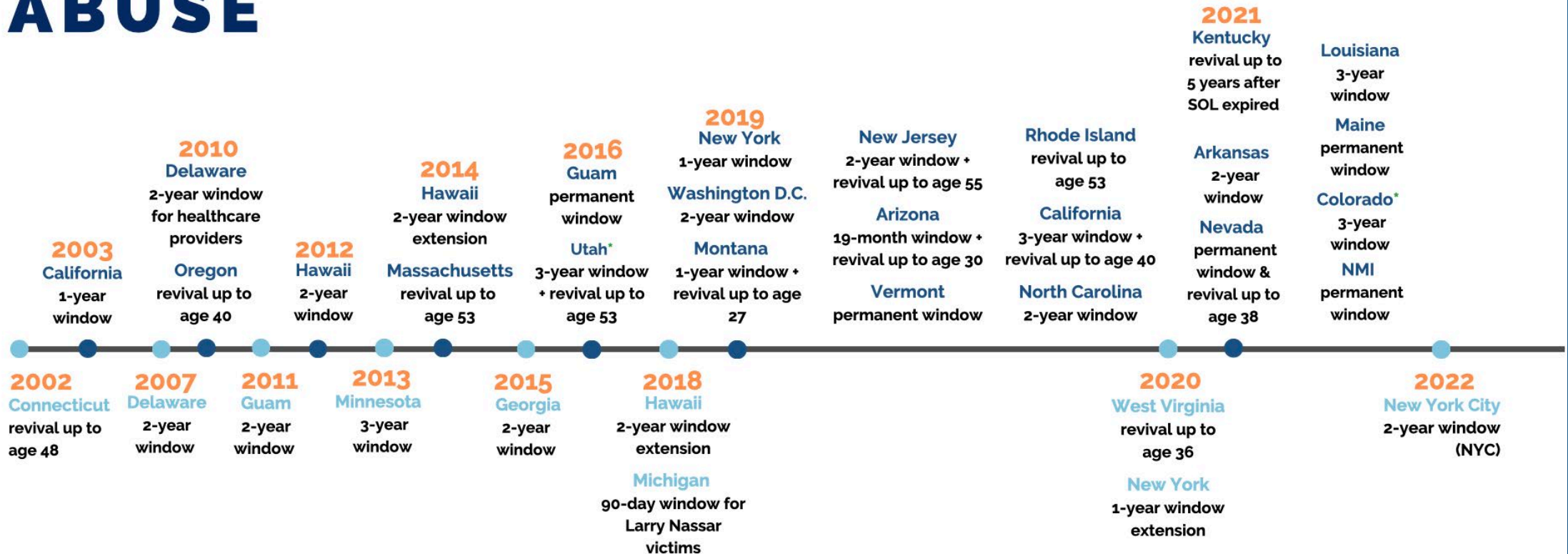
U.S.  
Jurisdictions

## REVIVAL OR WINDOW LAW FOR EXPIRED CIVIL CLAIMS

**24 States** and 3 Territories revived claims: AZ, AR, CA, CO, CT, DE, GA, HI, KY, LA, ME, MA, MI, MN, MT, NV, NJ, NY, NC, OR, RI, UT\*, VT, WV, DC, NMI, & Guam



# A BRIEF HISTORY OF **SOL REVIVAL LAWS** **FOR CHILD SEX** **ABUSE**



\*See [childusa.org/law/](https://childusa.org/law/) Revival Law Overview



**2023**

10 States have already introduced SOL reform legislation.  
*(IN, MN, MI, MO, NJ, OR, PA, SC, TX & WA)*

7 other states will soon introduce SOL reform legislation.









Maryland is in the back of the class.



# Federal SOL Reform for CSA



# 2022

## Federal SOL Reform Bills for CSA

### BILLS INTRODUCED

S 3103 & HR 8061,  
Eliminating Limits to Justice for  
Child Sex Abuse Victims Act of  
2022

HR 4860, Statutes of Limitation  
for Child Sexual Abuse Reform  
Act (creates incentives)

HR 5049 & S 3107, No Time  
Limit for Justice Act



### BILLS PASSED

S 3103 & HR 8061,  
Eliminating Limits to Justice  
for Child Sex Abuse Victims  
Act of 2022

SB 4926, The Respect for  
Child Survivors Act





**2022**

**More about:  
S 3103 & HR 8061,  
Eliminating Limits to  
Justice for Child Sex  
Abuse Victims Act of  
2022**

Introduced by: Senator Richard Durbin (S.3103)  
and Rep. Deborah Ross (HR 8061)

This act eliminates the statute of limitations under 18 U.S. Code § 2255 for a minor victim of a human trafficking offense or federal sex offense to file a civil action to recover damages.

**2022**

**More about:  
HR 4860, Statutes of  
Limitation for Child  
Sexual Abuse Reform  
Act**

Introduced by: Rep. Jennifer Wexton

**This bill creates incentives, including authorizing the Children's Bureau's Office of Child Abuse and Neglect to make grants, for states to (1) eliminate their criminal and civil statutes of limitations for child sexual abuse, and (2) revive previously time-barred civil claims.**

**2022**

**More about:  
HR 5049 & S 3107, No  
Time Limit for Justice  
Act**


Introduced by: Rep. Gwen Moore (H.R. 5049)  
and Sen. Kirsten Gillibrand (S. 3107)

**This bill directs the Department of Justice to increase a state's allocation of funds under the STOP Violence Against Women Formula Grant Program if, under the laws of the state, child sexual abuse criminal offenses and civil actions authorizing damages for victims of child sexual abuse are not subject to a statute of limitations.**



# **Title IX and Chapter 11 Bankruptcy**

**Many Congressional leaders  
want to reform the injustices  
inherent in Chapter 11  
Bankruptcy and Title IX of  
the Education Amendments  
of 1972**



# Members of Congress are expressing a growing concern over the epidemic of CSA

- Boy Scouts of America
- The Catholic Church
- Colleges and Universities
- Youth-serving organizations
- Young elite athletes
- USA Gymnastics
- USA Women's Soccer



# The Injustice of Caps

*Especially for the horrific torts of child rape, sodomy, and sexual assault which causes lifelong suffering and damage.*

This boy has a claim of negligence - the Coach failed to respond to his injuries in a game.



No Cap on Damages

This boy has a claim of negligence - the Coach sexually assaulted him after practices.



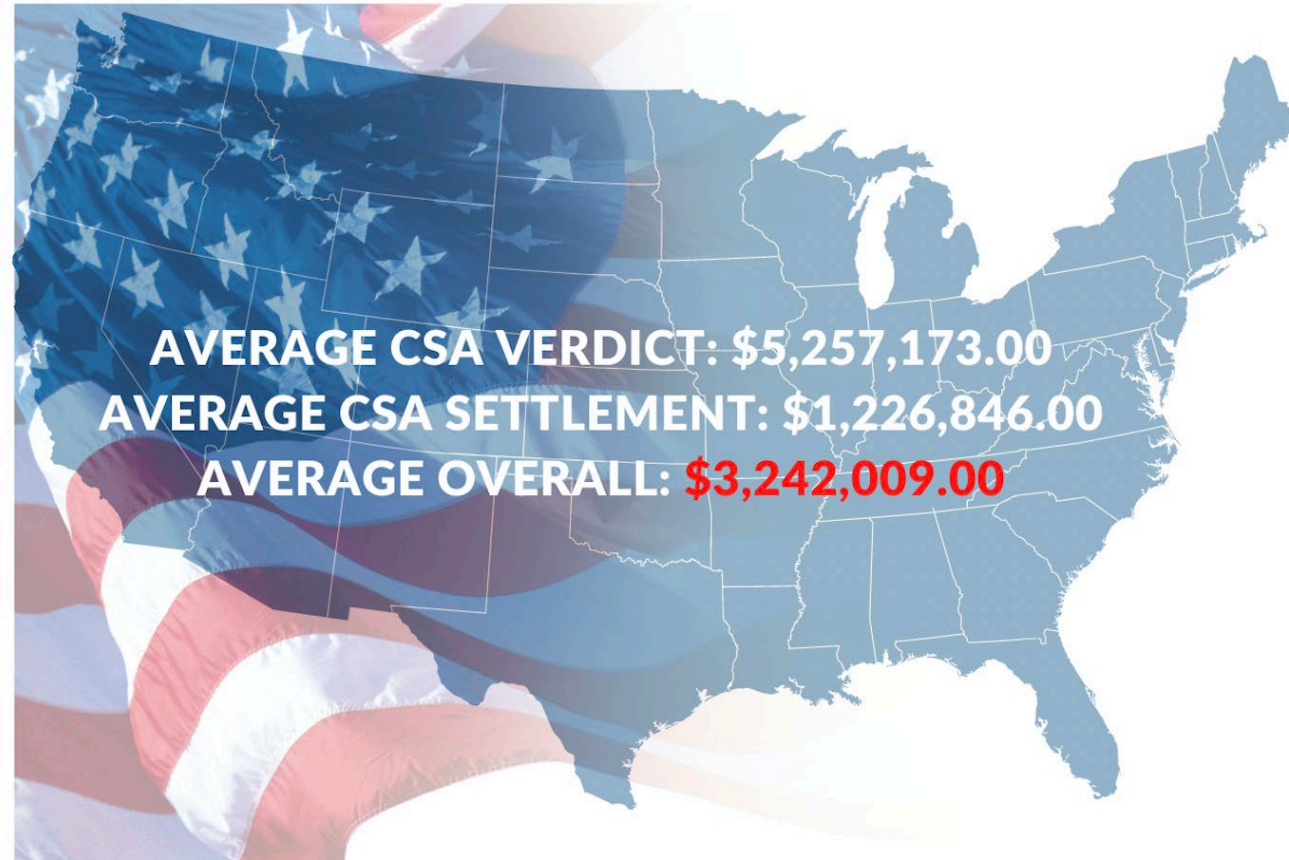
Cap on Damages



# CHILD USAdvocacy

WWW.CHILDUSADVOCACY.ORG

## Average Settlements and Verdicts for CSA Nationwide



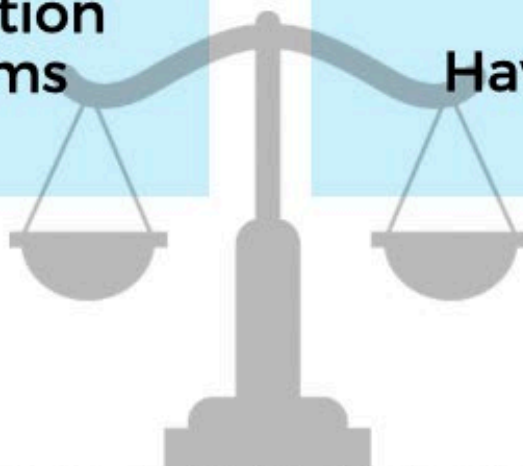
**27**

US Jurisdictions have  
passed revival legislation  
for expired CSA claims

Of the 27 states with  
revival statutes

**NONE**

Have caps on damages



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CHILD USAAdvocacy | 3508 Market Street, Suite 201, Philadelphia PA, 19104 |  
[info@childhsadvocacy.org](mailto:info@childhsadvocacy.org)



# CHAPTER 11 BANKRUPTCY DOES NOT SERVE THE COMMON GOOD

- Chapter 11 of the US Bankruptcy Code was never intended to be a clearinghouse for the coverup of child sexual abuse. It is an unsuitable legal structure that fails to protect the interests of victims and the common good.
- Bankruptcy was intended to protect institutions from financial business failures, not CSA cover-up.
- Institutions continue to operate, they get a new day, while victims suffer in perpetuity.
- Chapter 11 Bankruptcy re-traumatizes victims and turns them into unsecured creditors.
- The Bankruptcy Bar Date forces victims to come forward before they are emotionally ready.
- Victims become a number and receive pennies on the dollar.
- The bankruptcy process shelters institutions and the full display of their failures.
- The automatic stay on claims favors cover up.
- There is no discovery, investigation, or full accountability



# Bankruptcy: Who it Benefits

- **Bad Actor Debtors**
- **Related organizations that can obtain the benefits of Ch. 11 without the obligations\***

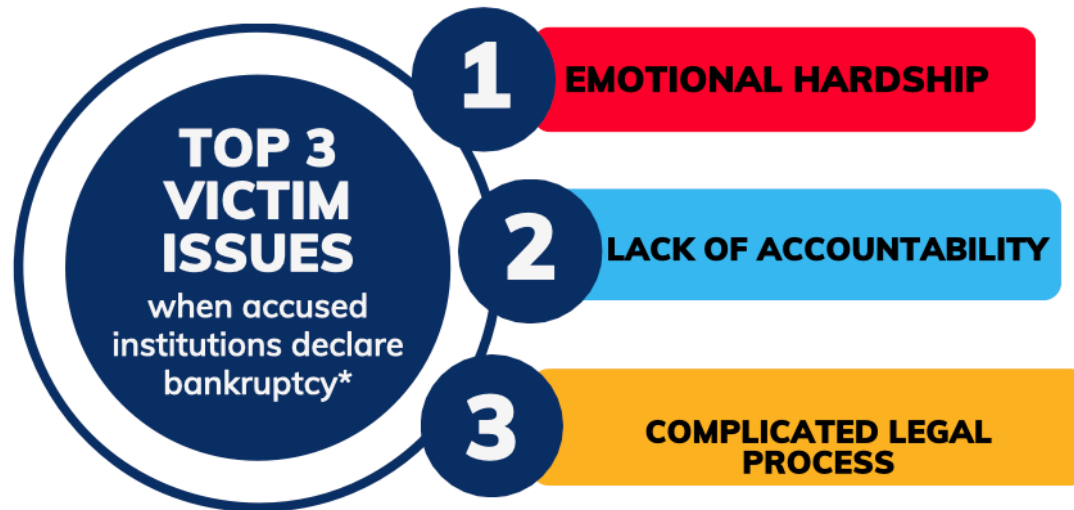


\*Chapter 11 has been interpreted to allow for "blanket immunity" to non-debtor third parties who can be released from liability without having to file as a debtor or revealing their assets and wealth.

**The system is geared to make the debtor and non-debtors whole and unaccountable.**

# Bankruptcy: Who Loses

- **Victims**



\*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.

- **The Public**

- The lack of discovery in the bankruptcy system results in a lack of organizational accountability and lets predators run free
- Taxpayers and the state are left to pay for the lifetime costs of child sexual abuse

# Thank you.

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**Kathryn Robb, Esq.**

**Executive Director, CHILD USAdvocacy**

**#781-856-7207**

**[krobb@childusadvocacy.org](mailto:krobb@childusadvocacy.org)**



## 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 <[jstiernon@venable.com](mailto:jstiernon@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  
o: 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

**VENABLE**<sup>®</sup> LLP

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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 & 1<sup>st</sup>  
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

BRIAN E. FROSH  
ATTORNEY GENERAL

ELIZABETH E. HARRIS  
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
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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)

---

**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 14<sup>th</sup> Venable Brief

**VENABLE**<sup>®</sup> LLP

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January 14, 2019

VIA E-MAIL AND FIRST CLASS MAIL

Jennifer L. Briemann, Executive Director  
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10 Francis Street  
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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 – 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  
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
DEPUTY ATTORNEY GENERAL



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

CONFIDENTIAL  
March 16, 2019

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

Dear Delegate Dumais:

SANDRA BENSON BRANTLE  
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE  
DEPUTY COUNSEL

JEREMY M. MCCOY  
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER  
ASSISTANT ATTORNEY GENERAL

## 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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FRANCIS KING CAREY  
SCHOOL OF LAW

# Eliminating the So-Called Statute of Repose

Kathleen Hoke

\*Law School Professor

January 19, 2023

\*Any views expressed are those of Professor Hoke and do not represent the position of Maryland Carey Law; the University of Maryland, Baltimore; or the University of Maryland System

# What is a Statute of Repose?

**Long:** A statute of repose establishes a time after which a person/entity is free from liability regardless of whether a claim has accrued. The limitations period begins to run when a person/entity acts. Once the time expires, all claims of negligence are extinguished, even those that have not yet arisen.

**Short:** Statutes of repose *set a date certain* by which a person/entity is free of liability for negligence.



# Purpose of a Statute of Repose

The purpose of a statute of repose is to ***prevent unpredictability*** for industry and professionals engaged in certain trades and professions and to protect insurers' ability to predict future claims. These protections allow for stability in the marketplace from which we all benefit.

# Statute of Repose v. Statute of Limitations

## ***Statute of Limitations (Procedural)***

Sets a date by which a claim must be filed based on when the injured party knew or should have known of the harm and who caused it.

## ***Statute of Repose (Procedural and Substantive)***

Sets a date by which a claim must be filed regardless of whether the injured party is aware of injury and who caused it or whether the injury has even occurred.

# Statute of Repose v. Statute of Limitations

***Statutes of limitation*** may be changed by the legislature and those changes may be applied retroactively without constitutional concern in most circumstances.

***Statutes of repose*** may be interpreted as providing a property right to a defendant whose negligence causes harm after passage of the established time. Altering a statute of repose retroactively creates additional burdens for a legislature.



# Statute of Repose in Maryland: Purpose

In Maryland, the General Assembly uses statutes of repose to create vested property rights in ***“consideration[] of the economic best interests of the public.”***

*SVF Riva Annapolis v. Gilroy*, 459 Md. 632 (2018)

***Maryland has only one statute of repose.***

# Statute of Repose in Maryland: Construction Industry

*Courts & Judicial Proceedings §5-108* contains a “statute of repose” for *improvements to real property and to related professionals* who are *highly regulated*.

Capital improvements are *economic drivers*; this protection reflects the *public interest in a strong economy*.

# Statute of Repose: Construction Industry

**Owner:** No cause of action accrues for wrongful death, personal injury, or property damage caused by defective and unsafe condition if harm occurs *more than 20 years after the date the improvement becomes available for use.*

**Architect, Engineer, Contractor:** *10 years after the date the improvement becomes available.*

**Exception:** Asbestos; a public health concern.



# Other Statutes of Repose in Maryland



## **Courts and Judicial Proceedings §5-117(d)**

In no event may an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

# **Courts and Judicial Proceedings §5-117**

## **Uncodified Section 3**

That the statute of repose under § 5–117(d) 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.

# Questions for 2023

- ✓ *Was a statute of repose created in 2017?*
- ✓ *If so, what is the impact of repealing the statute of repose and having it apply retroactively?*

There is genuine debate on these questions.

*The best answer is that the Supreme Court of Maryland will have to decide.*



# Was a Statute of Repose Created in 2017?

## EARNEST DEBATE



## Maryland Supremes on Statutes of Repose

Maryland courts look holistically to determine if a statute is one of limitation or one of repose.

***Relevant in this inquiry are:***

- ✓ what triggers the running of the period;
- ✓ whether the statute eliminates claims that have not yet accrued;
- ✓ purpose behind the statute; and
- ✓ legislative history surrounding passage.

***Anderson v. United States, 427 Md. 99 (2012)***

**Anderson:** The trigger for a statute of repose period is unrelated to when injury occurs.

**§5-108:** Contractor/architect/engineer: once the building is available for use, the clock starts ticking. ***Completing the building—not the injury—starts the clock and claims for injuries that occur after 10 years are barred.***

**§5-117:** The ***injury must have occurred for the clock to start running.*** There are no claims that could occur after the 20 years. ***Injury is the trigger.***

***Language, history, and purpose support  
that no statute of repose was created.***

The General Assembly is aware of the language used to create a statute of repose and does so in ***“consideration[] of the economic best interests of the public.”***

*SVF Riva Annapolis v. Gilroy*, 459 Md. 632 (2018)



# Language Used in §5-117

***Anderson:*** The General Assembly is aware of the language and conditions necessary to create a statute of repose and did so in §5-108 by using particular language that ***clearly extinguishes claims before they have accrued.***

**No such language exists in §5-117; more like the medical malpractice statute in §5-109 found in *Anderson* to NOT be a statute of repose.**

# History: Intent of 2017 Legislature

The General Assembly never intended to create a vested right in entities that sheltered child sexual abusers.

- Full records for HB 642/SB 505 contain no discussion about constitutional implications of a statute of repose.
- Comments from members who passed the bill indicate no intention to grant permanent immunity.

# History: Intent of 2017 Legislature

***Delegate Atterbeary*** noted that permanent immunity from liability “***was never discussed,***” and ***then JPR Chair Zirkin*** stated “***it wasn’t anyone’s intent” to grant permanent immunity.***

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

# 2019 and 2020 House Repeal

HB 687 (2019) and HB 974 (2020) would have repealed the so-called statute of repose:

- ✓ 2019: Passed House by a vote of 135-3 before failing in the Senate Judicial Proceedings Committee (5-5).
- ✓ 2020: Passed the House 127-0; not voted in the Senate Judicial Proceedings Committee (early closure due to the pandemic).



# Purpose: To Protect Those Who Failed to Protect Children?

What could possibly be the purpose—the public benefit—of creating extraordinary protection through a statute of repose to **EVERY ORGANIZATION** that **NEGLIGENTLY** failed to protect children from sexual abuse?

Why would this protection exist even when such protection does not exist for medical malpractice or lesser torts?

# Can a Statute of Repose be Repealed Retroactively?

**EARNEST DEBATE**



# **Attorney General Advice Letters**

## **Rowe to Clippinger March 12, 2019**

No case law in Maryland finding that revival of an extinguished claim is unconstitutional.

## ***Rowe to Dumais March 16, 2019***

Proposed 2-year lookback window would likely be found unconstitutional

# Public Policy Supports Constitutionality

## *Repeat Question:*

What could possibly be the purpose—the public benefit—of creating extraordinary protection through a statute of repose to **EVERY ORGANIZATION** that **NEGLIGENTLY** failed to protect children from sexual abuse?



# Public Policy Supports Constitutionality

The public interest is best served by

- ✓ Allowing survivors the opportunity to prove the harm imposed on them and by whom and to seek compensation for the harm;
- ✓ Bringing public disclosure of the names of people who have sexually abused children, which will protect today's children from harm.

# Repealing Gives Survivors the Opportunity to Seek Relief

Repealing with retroactive impact the so-called statute of repose added to §5-117 in 2017 will *allow the survivors with revived claims to get to the courthouse.*

And this difficult question on the interpretation and application of the 2017 changes will be decided where it should be—the courts.


# Questions?

Kathleen Hoke

Law School Professor

(410)706-1294

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# Briefing: Child Sexual Abuse Prevention and Civil Statute of Limitations

MARYLAND SENATE JUDICIAL PROCEEDINGS COMMITTEE, FEBRUARY 19, 2023

PRESENTATION OF CARY SILVERMAN  
ON BEHALF OF THE AMERICAN TORT REFORM ASSOCIATION



# What we will discuss today

2

- ▶ **Why do we need statutes of limitations?**
  - ▶ What purposes do they serve?
  - ▶ Why are some longer than others?
- ▶ **Why is ATRA concerned with proposals to eliminate a statute of limitations entirely and revive time-barred claims?**
  - ▶ Precedent set
  - ▶ Problems with retroactivity
  - ▶ Slippery slope concerns
- ▶ **How have other states responded?**
  - ▶ Most have *prospectively* extended the period
  - ▶ Significant constraints on reviving time-barred claims in most states that have done so
- ▶ **Is reviving time-barred claims constitutional?**

# What purposes are served by statutes of limitations?

- ▶ **Are they just a trap for the injured?**  
A way to get out of liability on a technicality?
- ▶ **A core element of the civil justice system**
  - ▶ Allows judges and juries to decide cases based on best evidence available.
  - ▶ When witnesses and records available, and memories fresh.
  - ▶ Helps courts reach accurate decisions about liability.
- ▶ **What about the burden of proof?**  
**Doesn't a plaintiff have to prove his or her case?**
  - ▶ Civil standard: Preponderance of the evidence = more likely than not, 51%
  - ▶ A defendant must respond to allegations after loss of witnesses, records, and institutional knowledge.

Why are statutes of limitations shorter for some claims, but longer for others?

- ▶ **Does the length reflect the severity of the injury?**
  - ▶ Paraplegic due to drunk driver = 3 years
  - ▶ Maimed by defective product = 3 years
  - ▶ Death due to careless or reckless conduct = 3 years
- ▶ **Does the length reflect the level of wrongdoing?**
  - ▶ Person's life or business ruined by defamation = 1 year
  - ▶ Family of person murdered = 3 years
- ▶ **Compare** the SOL for:
  - ▶ Default of a lease contract = 4 years
  - ▶ Lawsuits over promissory notes = 12 years
  - ▶ Contracts under seal = 12 years
  - ▶ Lawsuits seeking recovery of land = 20 years
- ▶ **The length typically reflects the type of evidence that will be needed to accurately decide liability.**



# Maryland's Period for Filing Lawsuits Alleging Injuries from CSA

- ▶ **Until 2003**
  - ▶ Ordinary period for civil claims (3 years of 18)
  - ▶ Why are some longer than others?
- ▶ **2003 to 2017**
  - ▶ 7 years of age 18 (age 25)
- ▶ **2017 - present**
  - ▶ 20 years of age 18 (age 38)
  - ▶ 3 years of perpetrator's conviction
- ▶ **These extensions applied *prospectively***
  - ▶ "This Act may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before" the effective date of the new law."



# What are the concerns?

- ▶ Eliminating a statute of limitations entirely sets a **troubling precedent** for other civil claims.
  - ▶ Tort claims, by their nature, often involve tragic injuries.
  - ▶ But all claims are subject to a finite period.
- ▶ **Retroactivity** significantly exacerbates this concern.
  - ▶ If prospective, an organization can:
    - ▶ Set a document retention policy that saves records forever.
    - ▶ Maintain meticulous records of actions taken.
    - ▶ Decide not to provide services or products subject to extraordinary liability.
    - ▶ Decide not to acquire a business that operated in risky area.
    - ▶ Purchase additional insurance.
  - ▶ Reviver results in a sudden unexpected surge of old claims.
- ▶ **Slippery slope**, already underway:
  - ▶ Expansion to adult claims
  - ▶ Expansion to physical and emotional abuse claims
  - ▶ Other areas – product liability, asbestos, environmental claims
  - ▶ Retroactively authorizing novel claims for past conduct
- ▶ **Civil justice system loses predictability, certainty, and accuracy.**

# How have other states responded?

- ▶ Most legislatures have, like Maryland, responded by *prospectively* increasing the statute of limitations, even if a bill started out with a more extreme approach.
- ▶ Recent examples:
  - ▶ Alabama: Tort claim SOL → Age 25
  - ▶ Pennsylvania: 12 years → Age 55
  - ▶ Tennessee: 3 years of discovery → Age 33 or 3 years of discovery
  - ▶ Texas: Age 33 → Age 48

# How have other states responded?

- ▶ 24 states and DC have revived time-barred claims since 2002, BUT most of these laws included significant constraints on revived claims that are not in Maryland H.B. 1.
  - ▶ **Perpetrator only:** MA (2014), GA (2015), RI (2019)
  - ▶ **Actual knowledge of abuse** or **criminal misconduct:** OR (2009), UT (2016), AZ (2019), WV (2020)
  - ▶ **Gross negligence** in revived claims against entities: DE (2007), HI (2012), VT (2019)
  - ▶ **Retroactive application of new finite SOL:** CT (2002) (age 48), OR (2009) (age 40 or 5 years of discovery), DC (2019) (age 40), WV (2020) (age 36), KY (2021) (10 years), NV (2021) (age 38)
  - ▶ **Cutoff of look back** at certain year: CO (2021), MI (2018)
  - ▶ **Limit on damages** in revived actions: CO (2021)
- ▶ Public entities – included or not included?



## Assessment of Other State Legislation

- ▶ Most states enact prospective extensions for policy and constitutional reasons.
- ▶ Few states have enacted open-ended revivers, such CA, NY, NJ, MN.
- ▶ 2/3 of the 24 states that have enacted some form of reviver had safeguards absent from HB 1.
- ▶ Some recent enactments are likely to be invalidated as unconstitutional.



# Is it constitutional to revive time-barred claims?

## ► **Minority approach** (about 1/3 of states)

- Retroactive criminal laws are unconstitutional, but the legislature can revive time-barred claims if it explicitly states its intent to do so.
- U.S. Supreme Court has indicated that states may provide greater constitutional safeguards over revived claims than the federal constitution.

## ► **Majority approach**

- Once a statute of limitations has run, a defendant has a vested right that cannot be taken through subsequent legislation.
- Courts reach the same result whether they apply a specific state constitutional provision prohibiting retroactive legislation, due process safeguards, a remedies clause, or another provision.

# In the state supreme courts' own words:

- ▶ “The weight of American authority holds that the bar does create a vested right in the defense.” -Alabama (1996)
- ▶ “[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred.” -Arkansas (1992)
- ▶ “[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action.” -Iowa (1995)
- ▶ “The authorities from other jurisdictions are generally in accord with our conclusion” that there is a substantive right in a statute of limitations after the prescribed time has completely run and barred the action. -Maine (1980)
- ▶ The prohibition of legislative revival of a time-barred claim “appears to be the majority view among jurisdictions with constitutional provisions.” -Missouri (1993)
- ▶ The “great preponderance of state appellate courts” reject claims-revival laws. -Rhode Island (1996)
- ▶ “Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.” -South Dakota (1993)

# The most recent state high court decision

- ▶ Utah enacted a statute reviving time-barred claims against perpetrators and those who would be criminally responsible for childhood sexual abuse in 2016.
- ▶ ***Mitchell v. Roberts***, 469 P.3d 901 (Utah 2020) unanimously invalidated the reviver.
  - ▶ “[T]h Utah legislature is **constitutionally prohibited** from retroactively reviving a time-barred claim in a manner depriving a defendant of a vested statute of limitations defense. This principle is well-rooted in our precedent, a point meriting respect as a matter of stare decisis. It is also confirmed by the extensive historical material. . . .”
  - ▶ “[O]ur state followed the **majority approach** ‘[i]n refusing to allow the revival of time-barred claims through retroactive application of extended statutes of limitations.’”
  - ▶ “We can appreciate the moral impulse and substantial policy justifications for the legislature's decision to revive previously time-barred claims of victims of child sex abuse. . . . **We have enormous sympathy for victims of child sex abuse. But our oath is to support, obey, and defend the constitution.** And we find the constitution to dictate a clear answer to the question presented. The legislature lacks the power to retroactively vitiate a ripened statute of limitations defense under the Utah Constitution.”

# Pending constitutional challenges

- ▶ 15 of 24 states that have revived time-barred claims did so since 2019.
- ▶ Constitutional challenges are pending in appellate courts in:
  - ▶ Colorado
  - ▶ Louisiana
  - ▶ North Carolina
  - ▶ New York
  - ▶ Rhode Island



# Amicus Brief - Public Schools

This Tuesday, a group of organizations representing public school districts filed an amicus brief in the Colorado Supreme Court case:

“One of [our] member school districts recently received notice of an alleged abuse claim dating back to the early 1980s, prompting an extensive search for records or witnesses available to confirm whether the alleged perpetrator had been an employee, let alone whether and to what degree the individual may have interacted with the claimant. A 30-year-old employee in 1980 would be over 80 years old today, if they were still alive, and memories fade. The odds that employees from the 1970s are still available to provide information now are even more remote and become miniscule when reaching back another decade into the 1960s.

The likelihood that no relevant documents will be available is similarly high. . . . [R]etention has long been dictated by reasonable need, informed by records retention standards and applicable statutes of limitations, as well as the reality of available resources. Until recently, school districts and other local governmental entities have

# Maryland's Constitutional Law

- ▶ Consistent with the majority approach.
- ▶ *Dua v. Comcast Cable*, 805 A.2d 1061, 1078 (Md. 2002):
  - ▶ “From the earliest cases to the present, this Court has consistently taken the position that retroactive legislation, depriving persons or private entities of vested rights, violates the Maryland Constitution, regardless of the reasonableness or ‘rational basis’ underlying the legislation.”
  - ▶ “This Court has consistently held that the Maryland Constitution ordinarily precludes the Legislature (1) from retroactively abolishing an accrued cause of action, thereby depriving the plaintiff of a vested right, and (2) from retroactively creating a cause of action, or reviving a barred cause of action, thereby violating the vested right of the defendant.”
- ▶ *Doe v. Roe*, 20 A.3d 787, 800 (Md. 2011):
  - ▶ The 7-year statute of limitations for childhood sexual abuse claims enacted in 2003 can apply retroactively to add time to claims that have not expired. “We would be faced with a different situation entirely had [the plaintiff’s] claim been barred under the three-year limitations period.”

# What's the difference between a statute of limitations and statute of repose?

16

- ▶ Statute of limitations:
  - ▶ Runs from the date of the injury (or, for minors, turning 18).
  - ▶ Subject to discovery rules, equitable tolling.
  - ▶ Courts have some flexibility.
- ▶ Statute of repose:
  - ▶ Not linked to the date of the injury.
  - ▶ Provides an absolute end to liability after a certain amount of time from an event.
  - ▶ Can, in some cases, end liability even before an injury.
- ▶ What does it have to do with the constitutionality of a reviver?
  - ▶ Maryland courts have consistently and repeatedly recognized that a statute of repose creates a “vested” substantive right to be free from liability after a legislatively determined period.
  - ▶ Further increases the already high likelihood that, the Court of Appeals will find a reviver unconstitutional.



# Maryland's Constitutional Law: AG Opinions to Legislature

March 10, 2003  
March 12, 2019  
March 16, 2019  
June 23, 2021

## Conclusions:

- ▶ A reviver of time-barred claims, without a statute of repose, is “possibly” unconstitutional.
- ▶ Considering the statute of repose, a reviver would “most likely be found unconstitutional as interfering with vested rights.”
- ▶ “I find it unlikely that a court would find a change in the law creating a new two year during which a person would be once again liable to be sued did not violate the vested right created by the passage of the statute of repose.”

17

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June 23, 2021

The Honorable William C. Smith, Jr.  
2 East Miller Senate Office Building  
Annapolis, Maryland 21401-1991

Dear Senator Smith:

You have asked for advice concerning Senate Bill 134 and House Bill 263 of 2021, “Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations.” You have asked generally about the constitutionality of the bills and have raised specific questions. Your questions and the answers thereto appear below.

The bills would have revised the definition of the term “sexual abuse,” in Courts and Judicial Proceedings Article (“CJ”), § 5-117(a). They would also have deleted the current statute of limitation for sexual abuse of a minor, which requires that an action be brought before the victim reaches the age of majority or within the later of 20 years after the date the victim reaches the age of majority or 3 years after the defendant is convicted of a crime under Criminal Law Article, § 3-602 or an equivalent law in another jurisdiction. CJ § 5-117(a). The bills would also repeal provisions of current law that bar the award of damages against a person or government entity who is not the perpetrator more than seven years after the victim reaches the age of majority unless the person or governmental entity owed a duty of care to the victim, employed the perpetrator or exercised some degree of control over them, and there is a finding of gross negligence by the person or governmental entity, CJ § 5-117(c), and that bar the filing of an action for damages against a person or governmental entity that is not the perpetrator more than 20 years after the victim reaches the age of majority. CJ § 5-117(d). In the place of the current statute of limitation, the bills would provide that an action for damages for sexual abuse of a minor “may be filed at any time.”

I have previously advised that eliminating a statute of limitation in this way may or not be unconstitutional, but that it was possible that retroactive application to barred cases could be found to violate the due process requirements of the Maryland Constitution. This conclusion is based on the fact that courts around the country have reached differing conclusions with respect to this question, and that the Maryland Court of Appeals had not yet addressed the issue. Letter to the Honorable Luke Clippinger from Kathryn M. Rowe, Assistant Attorney General, dated March 12, 2019; Letter to the Honorable Brian E. Frosh from Kathryn M. Rowe, Assistant Attorney General, dated March 10, 2003. This remains the state of the law. Thus, to the extent that the bill would



## What are the alternatives?

- ▶ If more time is needed beyond 20 years of majority, extend the time prospectively.
- ▶ Maintain a finite statute of limitations.
- ▶ ATRA does not support reviving time-barred claims of any kind. If, however, the legislature is committed to this approach:
  - ▶ Consider the types of constraints on revived claims adopted in other states.
  - ▶ Apply the reviver equally to public and private entities.
  - ▶ Be prepared for the likelihood that the law will lead to unnecessary litigation and provide false hope to survivors who file lawsuits, as the now renamed Maryland Supreme Court is likely to invalidate the reviver.



Questions?