



TO: Representative Robert E. Craven, Chair, Representative Carol Hagan McEntee, First Vice Chair, Representative Jason Knight, Second Vice Chair, and Honorable Members of the Joint Judiciary Committee

FROM: Marci Hamilton, CEO & Legal Director, CHILD USA; Professor, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USAAdvocacy

RE: H5725: Sexual Abuse Or Exploitation Of A Child

DATE: March 24, 2021

Dear Chair Craven, First Vice Chair Hagan McEntee, Second Vice Chair Knight, and members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding H 5725, which will increase access to justice for victims of child sexual abuse and enhance protection for children in Rhode Island. If passed, this legislation will make Rhode Island a leader in the fight to protect children.

By way of introduction, Marci Hamilton is the Founder, CEO, and Legal Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor. She authored *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and is the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of SOL reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

Kathryn Robb is the Executive Director of CHILD USAAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up H 5725, which would clarify the definition of "perpetrator defendant" to revive all expired claims for child sexual abuse against otherwise criminally-liable entities.



I. Delayed Disclosure Science Supports SOL Reform for Child Sex Abuse

There is a worldwide epidemic of child sex abuse, with at least **one in five girls and one in thirteen boys sexually assaulted before they turn 18.**ⁱ The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.ⁱⁱ It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.ⁱⁱⁱ

Trauma is only one of the barriers preventing children from disclosing abuse. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don’t have an adult they can disclose their abuse to, don’t have opportunities to disclose abuse, and aren’t believed when they try to disclose.”^{iv} Studies suggest that many victims, as much as 33%, never tell anyone they were abused.^v The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their memory.^{vi}

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**^{vii} Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked, shutting victims out of justice.



It is a medical fact that victims of child sex abuse often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse. Short SOLs for child sex abuse play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment.

II. Revival Windows Serve the Public Good by Preventing Future Abuse and Restoring Justice to Victims

Statutes of limitations, or SOLs, are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that has prevented victims from obtaining justice and naming their perpetrators publicly for fear of retaliation. There are untold numbers of hidden child predators in Rhode Island who are preying on one child after another because the existing SOLs provide that opportunity. By broadening the window, access to justice for past victims will be available; this will also greatly reduce the present danger to the children of Rhode Island.

There are three compelling public purposes served by window legislation:

- 1) SOL reform **identifies hidden child predators and the institutions** that allowed the abuse to the public so children will not be abused in the future;
- 2) It **shifts the cost of abuse** from the victims and society to those that caused it; and
- 3) It **educates the public** about the prevalence and harm from child sex abuse to prevent future abuse.

HOW REVIVAL WINDOW/LAWS HELP EVERYONE



Identifies previously unknown predators and institutions responsible

to the public, shielding other children from future abuse.



Shifts the cost of abuse

from the victims and society to the perpetrators and the institutions that enabled them.



Educates the public

about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.

SOL reform for child sex abuse validates victims and shifts the immense cost of abuse from victims and the public to the perpetrators and enabling institutions, placing them on notice that the state no longer stands with them - but with their victims.

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states, have shut down most cases. That is a major reason we knew so little about the epidemic of child sex abuse.

Yet, it is in society's interest to have sex abuse survivors identify hidden child predators and the entities that enabled the abuse to the public—whenever the survivor is ready. By allowing claims for past abuse to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. This is especially important because predators have many victims and abuse into their elderly years, especially if they are sheltered by other institutions or entities. As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. Preventing further abuse only serves to help society—by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children today to grow into healthy adults.

SOL reform also educates the public about the danger of child sexual abuse and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press and media industry publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse (i.e. Netflix's *Jeffrey Epstein: Filthy Rich* and HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal*). By shedding light on the problem, parents and others are better able to identify abusers and responsible institutions and prevent further abuse. This knowledge helps to educate children to be aware of the signs of grooming and abusive behavior and create more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

The costs of sex abuse are staggering. Child sex abuse generates many costs that impact the nation's health care, education, criminal justice, and welfare systems, costing nearly \$2 trillion annually. Numerous, scholarly studies have concluded that the average cost of child maltreatment is approximately \$830,928.00 per victim. M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017). It is unfair for the victims and Rhode Island taxpayers to be the only ones who bear this burden; H 5725 levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers. Further, if this revival window is passed Rhode Island will gain millions of dollars in revenue from Medicaid reimbursements from settlement funds and damages awards survivors recover.

III. Rhode Island Should Join the National Trend Toward SOL Reform for Child Sex Abuse by Reviving Expired Child Sex Abuse Claims

There is a vibrant national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL

reform movement since 2002, see CHILD USA’s Report: History of US SOL Reform: 2002-2020.^{viii} 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they’ve ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with 23 states and Washington D.C changing their SOLs for the better in 2019.^{ix} The powerful SOL reform wave rode its way into 2020, with 30 states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.^x



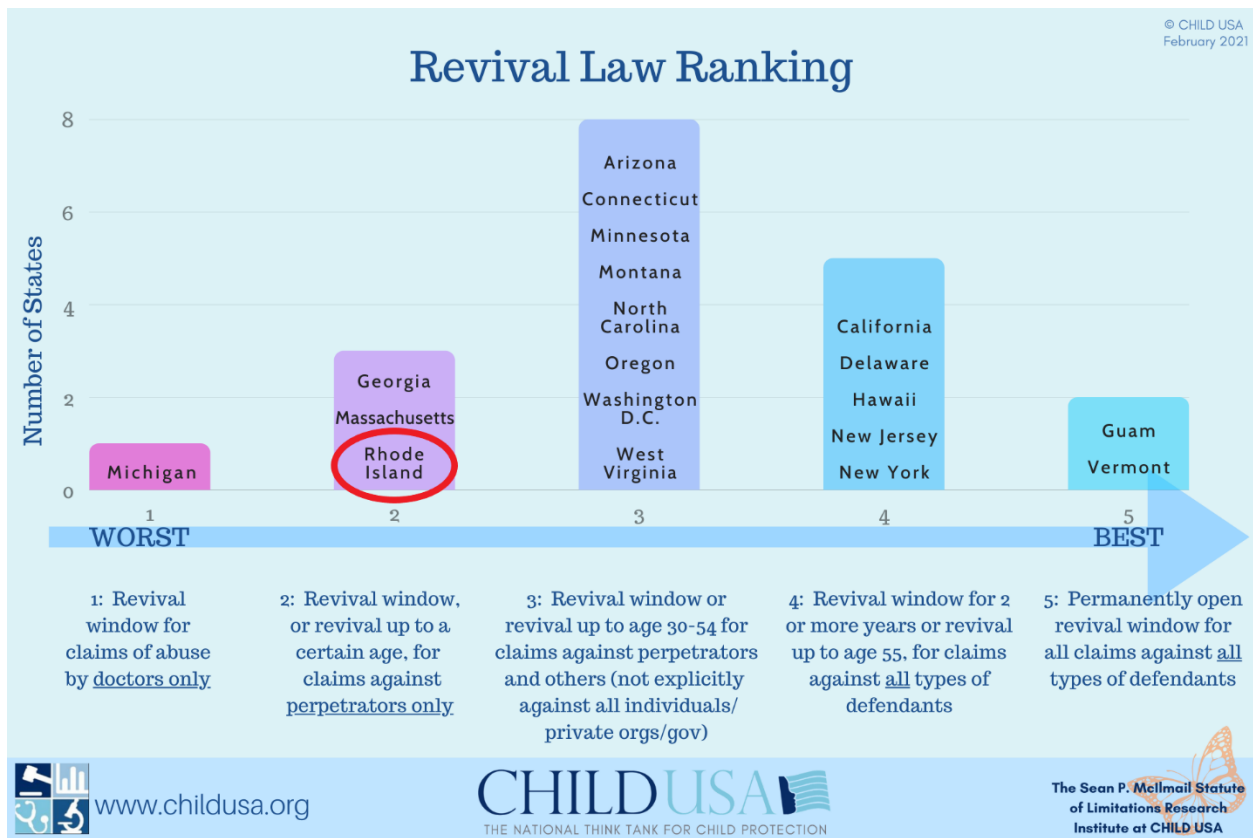
This year, Rhode Island is one of 30 states that have already introduced SOL reform bills for child sex abuse. Like Rhode Island, there are 17 other states that are trying to revive civil claims for past abuse.^{xi}

For claims against individuals and institutions other than individual perpetrators, Rhode Island’s SOL now expires when future victims reach age 53, or 7 years after discovery. However, for any claims arising before 2019, the SOL expired when victims reached age 21, or 3 years after discovery. This means the civil SOL against non-perpetrator defendants expired nearly *three decades* before the average victim told anyone they were abused. Colorado’s short SOL has kept a broad class of victims from coming to court, while protecting the institutions that sheltered abusers and covered up the abuse.

Institutional child sex abuse is a systemic problem occurring in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen and by looking the other way or covering up abuse when it’s reported, the **children these institutions serve remain at risk today**. H 5725 eliminates victims’ barrier to bring claims against entities for child sexual abuse. This sends a strong message to youth serving organizations in Rhode Island that the state will not tolerate “passing the trash” or looking the other way when a

person is raping or molesting a child in their midst. This bill will incentivize youth serving organizations to implement prevention policies and take action immediately to report abuse in real time. This proposed clarification of the revival law to include non-perpetrator defendants is more in line with the recent trend to give older victims more time to come forward in accordance with the delayed disclosure of abuse science.

The following graphic demonstrates how Rhode Island ranks amongst other states regarding its current revival laws. CHILD USA's average ranking of each state's revival law considers how helpful it is to survivors and to society by exposing hidden predators within the states. On a scale of 0-5, overall, Rhode Island ranks as a 2, making it below average amongst the states, with room for improvement.



There is only one way to restore justice to adult victims of child sex abuse: to revive their expired civil claims that were barred by unfairly short SOLs. In other words, to fix the wrongs done to them, they deserve the opportunity to file civil lawsuits if they so choose. Revival laws recognize that society for too long did not understand the plight of those sexually abused as children and extinguished their rights long before they had the ability to report or seek justice for their abuse. Revival laws enable adult victims of child sex abuse to sue their abusers and/or the institutions responsible years after they were abused. These laws are not solely about justice for victims; there are also important public safety reasons for allowing older claims of abuse to proceed. When victims are empowered to disclose their abuse and sue for their injuries, the public benefits from finding out who the perpetrators are, the cost of abuse is shifted to those who created it and it learns how to prevent child sex abuse.

There are already 18 states, Washington D.C. and Guam that have enacted revival laws for child sex abuse claims, including 15 with revival windows.^{xii} These revival laws have been instrumental in giving thousands of victims across America a long overdue opportunity for justice and educating the public about hidden predators and responsible institutions in their communities.

Rhode Island has made great progress for recent survivors of child sex abuse, but has not yet given older survivors of child sex abuse access to justice. Unfortunately, survivors of institutional abuse whose claims expired are still barred from filing claims for their abuse.

States that have revived expired civil SOLs have learned about hidden child predators and institutions that harbored them while empowering victims. These revival laws do not yield a high number of cases,^{xiii} but provide long-overdue justice to older victims of child sex abuse. They also address the systemic issue of institutional child sex abuse, which occurs with alarming frequency in athletic institutions, youth-serving organizations, religious groups, etc.

IV. Rhode Island Law Supports Clarifying the Revival Law to Include All Defendants

H 5725 seeks to clarify civil liability that caselaw already confirms. Rhode Island courts have long found criminal aiders and abettors liable in tort contexts. *State v. Long*, 61 A.3d 439, 447 (R.I. 2019) (finding a jury charge of aiding and abetting in context of growing marijuana); *Curtin v. Lataille*, 527 A.2d 1130, 1132 (R.I. 1987) (applying the criminal standard of aiding and abetting to a civil action of battery). H5725 seeks merely to confirm the intent of the Legislature to guarantee that victims of child sexual abuse may seek justice against all responsible defendants.

Rhode Island courts routinely look to the Legislature’s intent for guidance in interpreting statutory terms. The Supreme Court of Rhode Island has acknowledged the Legislature’s power to expand liability of revival laws to many types of defendants. In *Kelly v. Marcantonio*, 678 A.2d 873 (R.I. 1996), the Supreme Court of Rhode Island was asked to determine the meaning of “defendant-perpetrator” and therefore the applicability of the specific statute of limitations for child sexual abuse. Although the Court found that the meaning of “defendant-perpetrator” is limited only to individual perpetrators and other parties who aid and assist with the crime, the Court based its decision on its understanding of the Legislature’s intention when passing the law. *Id.*, at 876.

Similarly, in *Edwardo v. Gelineau*, Nos. PC-2019-9894, PC-2019-10530, PC-202002010 (R.I. Super. Ct., Oct. 16, 2020), the Court found that the term “defendant perpetrator” did not include defendants other than the individual perpetrator, based on its understanding of the Legislature’s intention and the plain language of the statute. “The Court must conclude that the omission [by the Legislature] of a specific reference to [other defendants] was not inadvertent.” *Id.*, at 20. In concluding, the Court remarked that it “gives great weight to the fact that the Legislature chose not to adopt to the definition of ‘perpetrator.’” *Id.*, at 21.

The Rhode Island Supreme Court and the Superior Court have both relied on their understanding of the Legislature’s intent and deferred to the plain meaning of statutory language when deciding who is included under the umbrella of “perpetrator defendant.” The Legislature has full authority to clarify its intent to include more defendants under the “perpetrator defendant” category. H 5725 seeks to do just that.

V. Conclusion

Once again, we commend you for supporting this legislation, which is desperately needed to help adult survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. Rhode Island's children deserve SOL reform to protect them today and into the future. Expanding the revival law to include more defendants is a positive step for Rhode Island's children and families. Please do not hesitate to contact us if you have questions regarding SOL reform or if we can be of assistance in any way on other child protection issues.

Sincerely,



Marci A. Hamilton, Esq.
Robert A. Fox Professor of Practice
Senior Resident Fellow, Program for
Research on Religion
University of Pennsylvania
marcih@sas.upenn.edu
(215) 353-8984



Kathryn Robb, Esq.
Executive Director
CHILD USA Advocacy
3508 Market St., Suite 201
Philadelphia, PA 19104
krobb@childusadvocacy.org
(781) 856-7207

ⁱ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

ⁱⁱ van der Kolk, B. *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress*. Harvard Review of Psychiatry (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford Remember How She Got Home?*, Scientific Amer. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, Justice Canada 30 (2019), available at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter "Hoskell").

ⁱⁱⁱ Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, Frontiers in Psychol. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

^{iv} CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

^v *Id.*

^{vi} Hoskell, at 24.

^{vii} CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

^{viii} CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Feb. 10, 2021), available at www.childusa.org/sol-report-2020.

^{ix} For more information on SOL reform in 2019, visit *2019 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at www.childusa.org/2019sol.

^x See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2020sol.

^{xi} *Id.*

^{xii} For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited March 3, 2021), available at www.childusa.org/law.

^{xiii} See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/law.