

TO: Honorable Members of the House Judiciary Committee

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

RE: MT SB 277: Revise laws relating to victims of crime

DATE: March 20, 2023

Dear Honorable Members of the House Judiciary Committee,

Thank you for allowing us to submit testimony in support of SB 277, which will eliminate the statutes of limitation (“SOLs”) for child sexual abuse (“CSA”) claims against individuals who commit acts of CSA. This legislation will not only bring long overdue justice to survivors, but it will also greatly reduce the present danger to children in Montana by exposing hidden predators who are still abusing children today.

By way of introduction, Professor Marci Hamilton is a First Amendment constitutional scholar at the University of Pennsylvania who has led the national movement to reform statutes of limitations to reflect the science of delayed disclosure of childhood sexual abuse and who founded CHILD USA, a national nonprofit think tank devoted to ending child abuse and neglect. Kathryn Robb is the Executive Director of CHILD USAAdvocacy, an advocacy organization dedicated to protecting children’s civil liberties and keeping children safe from abuse and neglect. Kathryn is also an outspoken survivor of child sex abuse.

I. Research on Trauma and Delayed Disclosure Supports SOL Reform for Child Sexual Abuse

A. There is a Nationwide Epidemic of CSA Causing Lifelong Damage to Victims

Currently, more than 10% of children are sexually abused, with at least one in five girls and one in thirteen boys sexually abused before they turn 18. CSA is a social problem that occurs in all social groups and institutions, including familial, religious, educational, medical, and athletic. Nearly 90% of CSA perpetrators are someone the child knows; in fact, roughly one third of CSA offenses are committed by family members.

The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:

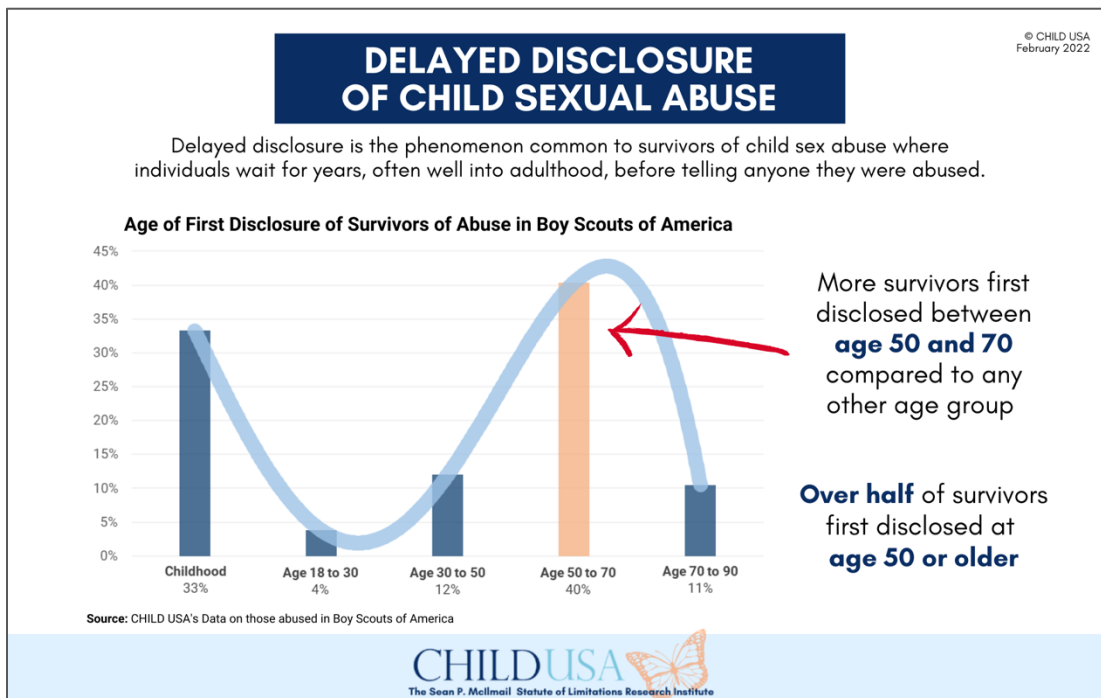
- Childhood trauma, including CSA, can have **devastating impacts on a child’s brain**, including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD); and disability.



- CSA victims suffer an **increased risk of suicide**—in one study, female CSA survivors were two to four times more likely to attempt suicide, and male CSA survivors were four to 11 times more likely to attempt suicide.
- CSA leads to an increased risk of **negative outcomes across the lifespan**, such as alcohol problems, illicit drug use, depression, marriage issues, and family problems.

B. CSA Victims Commonly Delay Disclosure of Their Abuse for Decades

Many victims of CSA suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, CSA victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities. Additionally, CSA survivors may struggle to disclose because of trauma and psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma surrounding victimization. Further, many injuries resulting from CSA do not manifest until survivors are well into adulthood. These manifestations may coincide with difficulties in functioning and a further delay in disclosure of abuse.



Moreover, disclosure of CSA to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the survivor knowing that they were abused, being willing to identify publicly as an abuse survivor, and deciding to act against their abuser. In light of these barriers to disclosure, it is not surprising that:

- In a study of survivors of abuse in Boy Scouts of America, **51%** of survivors disclosed their abuse for the first time at **age 50 or older**.
- **One-third** of CSA survivors **never report** their abuse to anyone.

For both children and adults, disclosure of CSA trauma is a process and not a discrete event in which a victim comes to terms with their abuse. To effectively protect children from abuse, SOL laws must reflect this reality.

II. SOL Reform Serves the Public Good by Giving Survivors Access to Justice and Preventing Future Abuse

Historically, a wall of ignorance and secrecy has been constructed around child sexual abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Short SOLs for CSA play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment and leave future children vulnerable to preventable sexual assault.

CHILD USA and CHILD USAAdvocacy are leading the vibrant national and global movement to eliminate civil and criminal SOLs and revive expired civil claims as a systemic solution to the preventable CSA epidemic. **There are three compelling public purposes served by the child sexual abuse SOL reform movement**, which are explained in the graphic below:

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE




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.



The Sean P. McIlmail Statute of Limitations Research Institute

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www.childusa.org | www.childusadvocacy.org

A. SOL Reform Identifies Hidden Child Predators and Institutions that Endanger Children

It is in society's best interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. The decades before public disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Some predators abuse a high number of victims and continue abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the highest time between offense to conviction was 36 years. SOL reform helps protect Montana's children by identifying sexual predators in our midst. By eliminating short restrictive SOLs, hidden predators are brought into the light and are prevented from further abusing more children in Montana.

B. SOL Reform Punishes Bad Actors and Shifts the Cost of Abuse

CSA generates staggering costs that impact the nation's health care, education, criminal justice, and welfare systems. The estimated lifetime cost to society of child sexual abuse cases occurring in the US in 2015 is \$9.3 billion, and the average cost of non-fatal per female victim was estimated at \$282,734. Average cost estimates per victim include, in part, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs. Costs associated with suicide deaths are estimated at \$20,387 for female victims.

It is unfair for the victims, their families, and Montana taxpayers to be the only ones who bear this burden; this bill levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers.

C. SOL Reform Prevents Further Abuse

SOL reform also educates the public about the dangers of CSA 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 media 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. By shedding light on the problem, parents and other guardians are better able to identify abusers and responsible institutions, while the public is empowered to recognize grooming and abusive behavior and pressure youth serving organizations to implement prevention policies to report abuse in real time. Indeed, CSA publicity creates more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

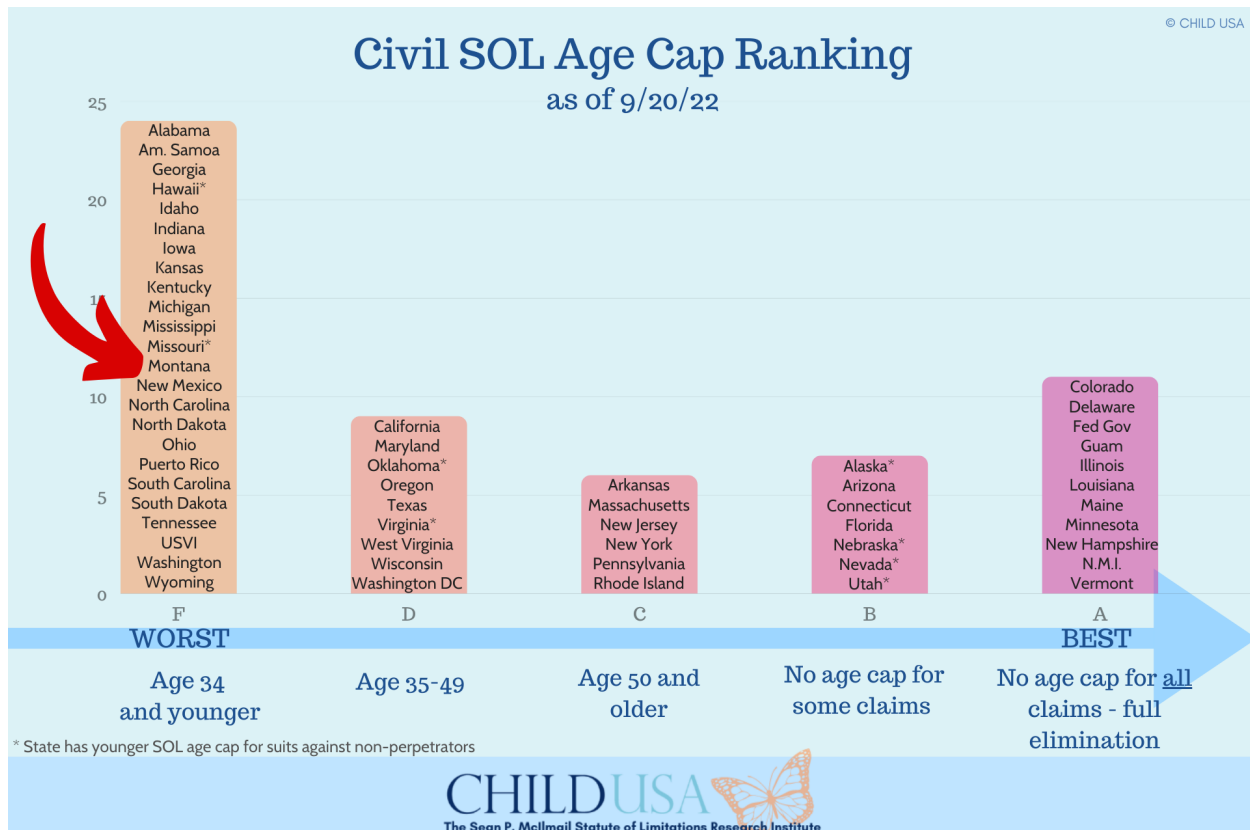
III. Montana Should Eliminate Civil SOLs for CSA

The gold standard of the SOL reform movement for CSA is for states to eliminate civil and criminal SOLs and revive expired civil claims—like Vermont, Maine, Guam and NMI have already done. Montana has made good progress and is already amongst the two-dozen states across the U.S. and three territories have revival laws giving survivors an opportunity to file claims for decades old abuse that were blocked by short SOLs. However, Montana is lagging behind with its short SOL for civil claims.

CHILD USA and CHILD USA Advocacy are proud to have played a major role working with bipartisan leaders on a new federal law eliminating the SOL for over a dozen federal civil CSA claims and permitting victims to bring a lawsuit against perpetrators and institutions for compensation for their injuries. 18 U.S.C. § 2255. “The science of trauma is clear: it often takes years for victims to come forward,” stated Senator Richard Durbin (D-Ill.), the sponsor of the bill. Senator Marsha Blackburn (R-Tenn.) correctly pointed out that “[t]he statute of limitations for sexual abuse offenses should never prohibit young survivors from getting the justice they deserve.”

Currently, Montana’s civil SOL for claims against perpetrators and entities expires when victims reach age 27 or 3 years after discovering their injuries. As shown in the graphic below, **Montana’s civil SOL ranks among the worst in the country.**

In contrast, 15 states, 2 territories, and the federal government, have already abolished an age cap for CSA claims. The worst states and territories with age limits that block claims when victims are in their 20’s are out of touch with science and the realities of child sex abuse trauma. **Montana is 1 of 15 states with the shortest civil SOLs in the country, cutting off survivors’ rights at age 27 or younger.**



SB 277’s civil elimination would improve Montana’s SOL significantly. It will give survivors the time they need to do the legal and emotional work necessary to revisit their childhood traumas and coordinate with attorneys to file their cases. If there is sufficient evidence to prove civil liability, the mere passage of time should never prevent survivors from accessing justice. This bill is in line

with the recent federal changes and the overall trend to give older victims more time to come forward in accordance with the delayed disclosure of abuse science.

IV. **Recommendations**

This bill would eliminate the applicable SOL for claims against *individuals* who committed childhood sexual abuse acts. However, by striking Section 27-2-216 subsection (3) in its entirety, this bill as written would ***shorten the applicable SOL for CSA claims against entities***. It would do away with the important 3-year discovery rule now applicable to entities that Montana adopted in 1989. The specific age 27 SOL for CSA would also no longer apply and claims against entities would be subject to the shorter general 2–3-year SOL for torts under Section 27-2-204.

We recommend broadening the CSA SOL elimination and clearly making it, not only applicable to civil claims against “the individual who committed the acts”, but also to claims against other individuals and entities for their wrongful or negligent conduct relating to the abuse.

Alternatively, we recommend extending the SOL for claims against other individuals and entities, or at least leaving the SOL for these claims as is by keeping Section 27-2-216 subsection (3) intact.

V. **Conclusion**

Once again, we commend you for supporting this legislation, which is desperately needed to validate survivors of CSA and protect Montana’s children from preventable sexual abuse. Eliminating the civil SOL is a positive step for Montana’s children and families. For more information about SOL reform, visit childusa.org/sol/ or email info@childusa.org. 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,



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