

**No. 2022-SC-0308**

**RIK JACMAN, LINDA THOMPSON, AND  
LOUISVILLE/JEFFERSON COUNTY  
METROPOLITAN GOVERNMENT,**

*Appellants,*

v. On Review from Court of Appeals Case No. 20-CA-0194  
and Jefferson Circuit Court Case No. 18-CI-002551

**SAMANTHA KILLARY, *et al.***

*Appellee.*

**NOTICE OF MOTION FOR LEAVE TO FILE BRIEF  
OF *AMICUS CURIAE* CHILD USA IN SUPPORT OF  
PLAINTIFF-APPELLEE**

Respectfully submitted,

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Pursuant to Kentucky Rule of Appellate Procedure 34, CHILD USA requests leave to file the accompanying brief as *amicus curiae* in the above-referenced case.

CHILD USA is the leading non-profit national think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good. CHILD USA has identified reforming statutes of limitation ("SOLs") for child sexual abuse ("CSA") as an integral component of the civil rights movement because it increases access to justice and accountability for victimized children and prevents future CSA.

CHILD USA's Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on SOLs, and has advised Congress and state governors, legislatures, and courts on the importance of SOL reform for CSA throughout the United States, including in Kentucky. Professor Hamilton is the author of "Justice Denied: What America Must Do to Protect Its Children," which is the only book on CSA SOLs. Likewise, CHILD USA is the only organization to track and study SOLs for CSA in the U.S and across the globe, as part of its Sean P. McIlmail SOL Reform Institute.

CHILD USA's interests in this case are directly correlated with its mission to eliminate barriers to justice for child sex abuse victims who have been harmed by individuals and institutions. This case has immediate and broad implications on the ability of sex abuse victims to bring civil claims in Kentucky. The 2021 Amendments to KRS § 413.249 enable victims of child sexual abuse whose claims were previously time-barred to bring their claims. In turn, reviving civil statutes of limitations for sexual abuse in Kentucky exposes hidden

perpetrators to the public, shifts the cost of abuse from victims to those who perpetrated and enabled the abuse, and ultimately educates the public and helps prevent future abuse.

In the accompanying brief, CHILD USA addresses the public interest in providing child sex abuse victims access to justice and Kentucky's compelling government interest in child protection through the 2021 Amendments, as well as the national landscape of revival window legislation in the United States. CHILD USA's legal and social science expertise can help the Court determine these questions, as CHILD USA is uniquely positioned to provide this Court with current research and analysis regarding the constitutionality of Kentucky's retroactive and revival provisions for sexual abuse claims, the impacts of the revival laws on public safety, the science of trauma and delayed disclosure by victims of abuse, and the current national trends on revival windows for sexual abuse.

For these reasons, CHILD USA respectfully requests that the Court grant this Motion for Leave to File Brief of *Amicus Curiae* and accept the accompanying proposed *amicus* brief for filing.

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# Supreme Court of Kentucky

No. 2022-SC-0308

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No. 18-CI-002551

**SAMANTHA KILLARY.**

*Appellee.*

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## **BRIEF OF CHILD USA AS AMICI CURIAE IN SUPPORT OF PLAINTIFF- APPELLEE**

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this brief was served on the Supreme Court of Kentucky electronically, and on the following via U.S. Mail, on this the 20th day of February, 2023: Clerk of the Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601; Hon. Jennifer Bryant Wilcox, Jefferson Circuit Court, 700 W. Jefferson St., Louisville, KY 40202; Jonathan Dyar, 600 W. Main St., Ste. 500, Louisville, KY 40202; Kent Wicker, William H. Brammell, Jr., Kayla M. Campbell, Wicker Brammell PLLC, 323 W. Main St., 11th Floor, Louisville, KY 40202; Carol S. Petitt, Adam Fuller, Vaughn Petitt Legal Group PLLC, 7600 W. Hwy. 146, Ste. 100, Pewee Valley, KY 40056; Kristie B. Walker, Assistant Jefferson Co. Attorney, 200 S. Fifth St., Ste. 300N, Louisville, KY 40202.

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## INTEREST OF AMICUS CURIAE AND PURPOSE OF BRIEF

*Amicus curiae*, CHILD USA, is the leading national nonprofit think tank fighting for the civil rights of children. CHILD USA is the only organization to track and study child sex abuse statutes of limitations (SOLs), as part of its Sean P. McIlmail SOL Reform Institute. CHILD USA's Founder, Professor Marci A. Hamilton, is the foremost constitutional law scholar on SOLs, and has advised Congress and state governors, legislatures, and courts on the importance of SOL reform for CSA throughout the United States, including in Kentucky.

CHILD USA is uniquely positioned to provide this Court with research and analysis on the science of delayed disclosure of abuse by victims, compelling public interests in the revival of expired civil SOLs, the impact on public safety, and the national landscape of revival legislation for CSA. This contribution will aid the Court's analysis beyond that which the parties' lawyers provide.



## INTRODUCTION

CHILD USA respectfully submits this brief as *amicus curiae*. This Court granted discretionary review of the Court of Appeals' ruling that KRS § 413.249, as amended by 2021 House Bill 472 (hereinafter referred to as the "2021 Amendments"), applied to all Defendant-Appellants and remanding Plaintiff-Appellee's claims to the trial court to proceed. In 2017, KRS § 413.249 was amended to extend the civil statute of limitations ("SOL") for child sexual abuse ("CSA") claims to age 28 (age of majority, plus 10 years), 10 years from discovery, or 10 years after conviction of a defendant for child sexual abuse or assault. The 2021 Amendments amended KRS § 413.249 again to explicitly apply to claims against all defendants and clarified that the 2017 extension to 10 years applies retroactively to claims accruing before the effective that were not already barred. Last, any claims that were time-barred as of March 23, 2021 can be brought against any defendant within 5 years of when the applicable SOL expired.

The 2021 Amendments reflect the Legislature's understanding that CSA inflicts a unique trauma on victims, rendering many of them unable to disclose their abuse until decades later. A ruling that incorrectly limits the applicability of KRS § 413.249 would have disastrous ramifications for CSA victims throughout Kentucky. It would also jeopardize the important public policies of justice, public safety, and preventing future CSA that the Kentucky Legislature sought to achieve. Accordingly, CHILD USA respectfully submits that this Court uphold the Court of Appeals' ruling.

## ARGUMENT

### **I. THE 2021 AMENDMENTS TO KRS § 413.249 REFLECT THE SCIENCE OF CSA TRAUMA AND DISCLOSURE AND ADDRESSES KENTUCKY'S COMPELLING INTEREST IN PROTECTING CHILDREN**

The 2021 Amendments to KRS § 413.249 acknowledge that victims of CSA often take decades to disclose their abuse. The recent provisions remedy the previous injustice of Kentucky's unreasonably short SOLs that prevented survivors of CSA from accessing the courts and kept the public ignorant of the actions of both abusive individuals and organizations. If the 2021 Amendments to KRS § 413.249 were to be judicially invalidated, ignoring clear statutory language, legislative intent, and compelling social interests, it would unjustly undermine the legislative authority in Kentucky and deviate from the national movement towards offering new paths to justice for survivors of child sexual abuse.

#### **A. CSA Uniquely Prevents Victims from Filing Timely Claims for their Injuries**

Child sexual abuse is a national public health crisis, with 3.7 million children sexually abused every year.<sup>1</sup> It affects one in five girls and one in thirteen boys in the United States.<sup>2</sup> An extensive body of evidence establishes that CSA survivors are

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<sup>1</sup> See *Preventing Child Sexual Abuse*, CDC (last visited Feb. 10, 2023), <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also David Finkelhor et al., *Prevalence of Child Exposure to Violence, Crime, and Abuse: Results From the Nat'l Survey of Children's Exposure to Violence*, 169(8) JAMA Pediatrics 746 (2015), available at <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2344705>.

<sup>2</sup> Gwenllian 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), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6180456/>; Marije Stoltenborgh et. al., A

traumatized in a way that is distinguishable from victims of other crimes. Indeed, many victims of child sex abuse suffer in silence for decades before they speak to anyone about their traumatic experiences. As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.<sup>3</sup> This crime typically occurs in secret, and many victims assume no one will believe them.<sup>4</sup>

Additionally, CSA victims may struggle to disclose their experiences due to the effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or the stigma of sexual victimization.<sup>5</sup> Victims also often develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffer.<sup>6</sup> Moreover, they disproportionately develop depression, substance abuse, PTSD, and challenges in personal relationships.

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*Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) *Child Maltreatment* 79 (2011); Noemí Pereda et al., *The Prevalence of Child Sexual Abuse in Community and Student Samples: A Meta-analysis*, 29 *Clinical Psych. Rev.* 328, 334 (2009).

<sup>3</sup> Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 *Child Abuse Negl.* 123 (2015), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

<sup>4</sup> See *Myths and Facts About Sexual Assault*, Cal. Dep't of Just., [https://www.meganslaw.ca.gov/mobile/Education\\_MythsAndFacts.aspx](https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx) (last visited Feb. 10, 2023); National Child Traumatic Stress Network Child Sexual Abuse Committee, *Caring for Kids: What Parents Need to Know about Sexual Abuse*, at 7 (2009), [https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring\\_for\\_kids\\_what\\_parents\\_need\\_know\\_about\\_sexual\\_abuse.pdf](https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf).

<sup>5</sup> Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 *Trauma Violence Abuse* 260, 279 (2019).

<sup>6</sup> Gail S Goodman et al., *A Prospective Study of Memory for Child Sexual Abuse: New Findings Relevant to the Repressed-memory Controversy*, 14 *Psychol. Sci.* 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

These mechanisms may persist well into adulthood, long past the date of abuse. In fact, a study found that 44.9% of male CSA victims and 25.4% of female CSA victims delayed disclosure by *more than twenty years*.<sup>7</sup> This translates to a harsh reality: more victims first disclose their abuse between ages *fifty and seventy* than during any other age.<sup>8</sup> It is estimated that 70–95% of CSA victims never report their abuse to the police.<sup>9</sup>

In sum, trauma affects child sex abuse victims in serious and wide-ranging ways, logically necessitating decades for them to process their abuse, much less report it.<sup>10</sup> The Kentucky Legislature’s 2021 Amendments judiciously reflects this reality.

#### **B. The 2021 Amendments to KRS § 413.249 Address Kentucky’s Compelling Interest in Child Protection**

The 2021 Amendments serve Kentucky’s “compelling” interest in child protection. *See, e.g., Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017); *M.C. v. Cabinet for Health and Family Services*, 614 S.W.3d 915, 922 (Ky. 2021). Importantly, the legislation was designated as a “remedial statute which is to be given the most liberal interpretation to provide remedies for victims of childhood sexual assault or abuse.” KRS § 413.249(7)(a). Three important public purposes are served by the Legislature’s enactment

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<sup>7</sup> Patrick J. O’Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. Child Sex Abuse 133 (2008).

<sup>8</sup> CHILD USA, Data on Abuse in Boy Scouts of America (on file with author at info@childusa.org)

<sup>9</sup> David Finkelhor et al., *Sexually Assailed Children: National Estimates and Characteristics*, U.S. Dep’t of Just., Office of Just. Programs (2008), <https://www.ojp.gov/pdffiles1/ojdp/214383.pdf>.

<sup>10</sup> Rebecca Campbell, Ph.D., *The Neurobiology of Sexual Assault: Explaining Effects on the Brain*, NAT’L INST. OF JUSTICE (2012), <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; *R.L. v. Voytac*, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D. et al., *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (2006).



of the 2021 Amendments. They: (1) identify previously unknown child predators and the institutions that shield them; (2) shift the cost of abuse from victims to those who caused the abuse; and (3) educate the public to prevent future abuse.

First, the 2021 Amendments facilitate the identification of previously unknown child predators<sup>11</sup> and the institutions that shield them, who would otherwise remain hidden. The decades before a victim is ready to disclose give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. In 2019, Kentucky led the nation for substantiated child abuse reports per capita, which included sexual abuse, for the third straight year, with more than 20,000 cases—and this only accounts for those cases actually reported to the authorities.<sup>12</sup> Unfortunately, unidentified predators continue abusing children; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.<sup>13</sup> Through the 2021 Amendments, the Legislature empowered victims to identify Kentucky's hidden child predators and the institutions that endanger children, helping prevent those predators from abusing more children.<sup>14</sup>

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<sup>11</sup> Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995).

<sup>12</sup> Jarrod Mills, *Kentucky's child abuse rate is more than double the national average, leads country*, TIMES-TRIBUNE (Apr. 7, 2021), [https://www.thetimestribune.com/news/local\\_news/kentuckys-child-abuse-rate-is-more-than-double-the-national-average-leads-country/article\\_d73366c0-776c-589b-baf9-07eef9849e3f.html](https://www.thetimestribune.com/news/local_news/kentuckys-child-abuse-rate-is-more-than-double-the-national-average-leads-country/article_d73366c0-776c-589b-baf9-07eef9849e3f.html); U.S. Department of Health & Human Services, Administration for Children and Families, Children's Bureau, *Child Maltreatment* (2019), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019.pdf>.

<sup>13</sup> Elliot et al., *supra* note 14.

<sup>14</sup> See generally, *Making the Case: Why Prevention Matters*, PREVENTCHILDAUSE.ORG (last visited February 22, 2022), <https://preventchildabuse.org/resource/why-prevention-matters/>; *Preventing Adverse Childhood Experiences*, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

Second, the retroactive and revival provisions in the 2021 Amendments help educate the public about the dangers of child sex abuse and how to prevent such abuse. When predators and institutions are exposed, particularly high-profile ones like Jeffrey Epstein and the Catholic Church, the media publish investigations and documentaries that enlighten communities about the insidious ways child molesters operate to sexually assault children, as well as the institutional failures that enabled their abuse.<sup>15</sup> In Kentucky, for example, the Archdiocese of Louisville faced more than 200 abuse allegations against priests and other church workers in 2013, leading to a \$25.7 million settlement, the second largest payout in an abuse case for the Catholic Church in the country at the time.<sup>16</sup> As a result, an independent investigator was provided access to 400 Archdiocese files, including thousands of pages of reports of abuse, and released a report listing 48 priests and members of religious orders credibly accused of CSA, with most of the abuse taking place in the 1960s and 1970s.<sup>17</sup>

As the 2021 Amendments permit an increased number of child victims to come forward, it similarly sheds light on the prevalence of CSA, which allows parents, guardians, and organizations to become better equipped with the tools necessary to identify abusers and responsible institutions, while empowering the public to recognize grooming and abusive behavior. Indeed, SOL reform not only provides access to justice previously withheld from victims of child sex abuse, but it also prevents further abuse by fostering

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<sup>15</sup> E.g., *Jeffrey Epstein: Filthy Rich* (Netflix 2020); *At the Heart of Gold: Inside the USA Gymnastics Scandal* (HBO 2019).

<sup>16</sup> Laurie Goodstein, *Archdiocese of Louisville Reaches Abuse Settlement*, THE NEW YORK TIMES (June 11, 2003), <https://www.nytimes.com/2003/06/11/us/archdiocese-of-louisville-reaches-abuse-settlement.html>.

<sup>17</sup> *Here is the list of Louisville priests accused of sexual abuse*, COURIER JOURNAL (Feb. 8, 2019), <https://www.courier-journal.com/story/news/crime/2019/02/08/priest-sex-abuse-list-louisville-catholic-priests-accused/2815992002/>.

social awareness while encouraging public and private institutions to implement accountability and safe practices.

Third, the cost of CSA to victims is enormous,<sup>18</sup> and they, along with the State of Kentucky, unjustly carry the burden of this expense. The estimated lifetime cost to society from United States CSA cases that occurred in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.<sup>19</sup> Average costs per victim include, but are not limited to, \$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.<sup>20</sup> These staggering expenses gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.<sup>21</sup> Civil lawsuits that result in awards and settlements not only equitably shift some of these costs away from victims and onto the abusers, but they also save the State money by reducing expenditures on public services.

Between 2002 and 2017, Kentucky had made minimal changes to its criminal and civil SOLs. Kentucky's previously short limitation periods rendered it practically impossible for the vast majority of victims to seek legal redress for their abuse; and, since it is unconstitutional to revive a criminal statute of limitations, filing civil claims pursuant

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<sup>18</sup> See M. Merricka et al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (July 2017); I. Angelakis et al., *Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis*, PSYCHOLOGICAL MEDICINE 1-22 (2019); Gail Hornot, *Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know*, J. PEDIATRIC HEALTHCARE (2015); Perryman Group, *Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment* (2014), <https://www.perrymangroup.com/media/uploads/report/perryman-suffer-the-little-children-11-2014.pdf>.

<sup>19</sup> Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

to the 2021 Amendments is the *only avenue of justice available* to many Kentucky survivors.<sup>22</sup> Accordingly, the Legislature’s enactment of the 2021 Amendments not only rationally remedy the long-standing injustice to CSA victims barred from bringing their claims under illogically short time restraints, but also serves Kentucky’s compelling public policy interests in keeping its children safe and preventing future child sexual abuse.

### **C. The Kentucky Legislature’s Judgment Should be Accorded Deference**

This Court should defer to the Legislature’s judgment to grant CSA victims access to justice and to help eliminate child sexual abuse in Kentucky. As states face important public policy issues relating to the ongoing child sexual abuse epidemic, judicial deference to legislative judgments on civil procedural retroactivity is now the norm. This is demonstrated by CSA cases such as *Sliney v. Previte*, 41 N.E.3d 732, 737–39 (Mass. 2015), *Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.4d 462, 516 (Conn. 2015), and *Cosgriffe v. Cosgriffe*, 864 P.2d 776, 779 (Mont. 1993). In upholding the constitutionality of a CSA claim-revival law the Supreme Court of Delaware wisely mused, “We do not sit as an überlegislature to eviscerate proper legislative enactments. It is beyond the province of courts to question the policy or wisdom of an otherwise valid law.” *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258–60 (Del. 2011).

In Kentucky, the 2021 Amendments were the source of great debate, politicking, and publicity, all of which centered on giving victims more time to bring their abusers to justice. Representative Lynn Bechler, the sponsor of HB 472, stated before a vote on an amendment to the bill, “This body has often shown its commitment over the years to protect

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<sup>22</sup> *California v. Stogner*, 539 U.S. 607, 610 (2003) (holding that retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).



children of the Commonwealth... As is often the case, children do not understand what is happening to them and how the posttraumatic effects of abuse are felt well into adulthood.<sup>23</sup>

He also indicated:

As society has come to understand more about the physical, emotional and psychological effects of sexual abuse, we need to acknowledge these effects as reasons why the victim may not immediately report the crime... My goal in introducing this measure is to help the victims and to hold perpetrators accountable.<sup>24</sup>

Similarly, when Governor Beshear signed the bill into law, he stated:

Most children, in particular the very young, do not disclose in real time. We must do everything we can to create the safe pathways so that survivors of childhood sexual abuse feel empowered to make their voices heard and tell their stories in their own time, while ensuring we can still hold the perpetrators accountable.

K.Y. Gov. Mess., 2021 Reg. Sess. H.B. 472.

Multiple community leaders working to end child abuse in Kentucky also thanked the Governor and state legislators following the signing of HB 472, including Dr. Terry Brooks, executive director of Kentucky Youth Advocates, and Jill Seyfried, executive director of Prevent Child Abuse Kentucky.<sup>25</sup>

A common argument against reviving child sex abuse causes of action is the threat of litigating “stale” claims. This is a red herring, as the plaintiffs—the child victims—bear the initial burden of proof. Ky. R. Civ. P. 43.01; *see e.g. Meyers v. Chapman*, 840 S.W.2d

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<sup>23</sup> *Hearing before the House of Representatives on HB 472*, 2021 Reg. Sess. (Ky. 2021) (Statement of Rep. Lynn Bechler) (Mar. 5, 2021), available at <https://www.youtube.com/watch?v=xqdKXtKaCjs>.

<sup>24</sup> Steve Rogers, *Sex abuse measures, legislation sparked by school shooting to become law*, ABC WTVQ (March 24, 2021), <https://www.wtvq.com/613641-2/>.

<sup>25</sup> Governor Andy Beshear, *Kentucky Youth Advocates*, YouTube (Mar. 23, 2021), <https://www.youtube.com/watch?v=ttATsmE0AKc>; Governor Andy Beshear, *Prevent Child Abuse Kentucky*, YouTube (Mar. 23, 2021), [https://www.youtube.com/watch?v=U1aP\\_myTvHs](https://www.youtube.com/watch?v=U1aP_myTvHs).

814, 824 (Ky. 1992). Victims then face the daunting challenge of proving their case. The “stale claim” argument in these cases is therefore more prejudicial to victims, not the wrongdoer. Creating a property right in a prescription period for child abuse would establish an additional layer of protection for child abusers and another nearly insurmountable hurdle for child victims, effectively ensuring that abusers would not be held accountable in a vast number of cases.

As the foregoing makes abundantly clear, this case is not simply about protecting “vested” property rights; it is about giving child abuse victims a voice and a chance to prevent their abusers from harming more children. In essence, Defendant-Appellants are asking the Court to sanction CSA by placing a higher value on an abuser’s right to prescription than on Kentucky’s compelling interest in protecting children. A judicial holding that bars Kentucky’s retroactive and revival legislation for child sex abuse statutes of limitation—in disregard of explicit statutory language, clear legislative intent, and compelling societal interests—would wrongly eviscerate vital legislative authority in Kentucky, as well as contradict the national trend of reviving civil claims to provide justice to victims of child sex abuse.<sup>26</sup> The Court should not make such an unjust holding.

## **II. DECISIONS IN OTHER STATES PERMITTING CLAIMS FOR DECADES OLD CHILDHOOD SEXUAL ABUSE SUPPORT THE CONSTITUTIONALITY OF THE 2021 AMENDMENTS TO § 413.249**

In 2021, Kentucky joined the vibrant national movement to protect children from sexual predators and honor justice for victims of CSA. Legislation allowing older survivors of child sexual abuse to seek justice has gained popularity in recent years, as lawmakers have realized that survivors often take longer to come forward and that SOLs

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<sup>26</sup> See Section II.

have historically prevented them from making claims in the past.<sup>27</sup> With Kentucky's 2021 Amendments to KRS § 413.249, the statute stands alongside at least thirty states and territories that enacted civil revival laws for CSA claims. The following table shows this prevailing trend:

<b>Jurisdiction</b>	<b>Revival Law</b>	<b>Statute</b>
<b>Arizona</b>	1.5-Year Window & Age 30 Limit (2019)	A.R.S. § 12-514; H.B. 2466, 54th Leg., 1st Reg. Sess. (Ariz. 2019)
<b>Arkansas</b>	2-Year Window (2021)	ARK. CODE ANN. § 16-118-118
<b>California</b>	3-Year Window & Age 40 Limit (2019)	CAL. CIV. PROC. CODE § 340.1 (2020)
	1-Year Window (2003)	CAL. CIV. PROC. CODE § 340.1 (2002)
<b>Colorado*</b>	3-Year Window (2021)	COLO. REV. STAT. § 13-20-1202  * New cause of action opens window for prior CSA.
<b>Connecticut</b>	Age 48 Limit (2002)	CONN. GEN. STAT. § 52-577d (2002)
<b>Delaware</b>	2-Year Window (2010)	DEL. CODE tit. 18, § 6856
	2-Year Window (2007)	DEL. CODE tit. 10, § 8145
<b>Florida</b>	4-Year Window (1992)	FLA. STAT. ANN. § 95.11
<b>Georgia</b>	2-Year Window (2015)	GA. CODE § 9-3-33.1
<b>Guam</b>	Permanent Window (2016)	Tit. 7 G.C.A §§ 11306; 11301.1(b)
	2-Year Window (2011)	7 G.C.A. § 11306(2) (2011); Public Laws No.31-06 (2011)
<b>Hawaii</b>	2-Year Window (2018)	HAW. REV. STAT. § 657-1.8

<sup>27</sup> CHILD USA, *Revival Laws for Child Sex Abuse Since 2002* (May. 5, 2022), <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

	2-Year Window (2014)	HAW. REV. STAT. § 657-1.8
	2-Year Window (2012)	HAW. REV. STAT. § 657-1.8
<b>Kentucky</b>	Limited Window (2021)	2021 Kentucky Laws Ch. 89 (HB 472) KRS § 413.249(7)(a-b)
<b>Louisiana</b>	3-Year Window (2021)	LA. STAT. ANN. § 9:2800.9
<b>Maine</b>	Permanent Window (2021)	ME. REV. STAT. ANN. tit. 14 § 752-C
<b>Massachusetts</b>	Age 53 Limit (2014)	MASS. GEN. LAWS ch. 260, § 4C (2014)
<b>Michigan</b>	90-Day Window (2018)	MICH. COMP. LAWS § 600.5851b
<b>Minnesota</b>	3-Year Window (2013)	MINN. STAT. § 541.073
	1-Year Window (1989)	MINN. STAT. § 541.073
<b>Missouri</b>	Age 23 Limit (1990)	MO. REV. STAT. § 537.046
<b>Montana</b>	1-Year Window & Age 27 Limit (2019)	MONT. CODE § 27-2-216
<b>Nevada</b>	Permanent Window & Age 38 Limit (2021)	NEV. REV. STAT. ANN. § 11.215, 41.1396
<b>New Jersey</b>	2-Year Window & Age 55 Limit (2019)	N.J. STAT. ANN. §§ 2A:14-2A & 2A:14-2B
<b>New York</b>	2-Year Window (2022)	NEW YORK CITY, N.Y., CODE § 10-1105 (2022)
	1-Year Window (2020)	N.Y. C.P.L.R. 214-g
	1-Year Window (2019)	N.Y. C.P.L.R. 214-g
<b>North Carolina</b>	2-Year Window (2019)	N.C. GEN. STAT. § 1-17
<b>Northern Mariana Islands</b>	Permanent Window (2021)	2021 N.M.I. Pub. L. No. 22-12 (HB 22-2, SDI)



<b>Oregon</b>	Age 40 Limit (2010)	OR. REV. STAT. § 12.117
<b>Rhode Island</b>	Age 53 Limit (2019)	R.I. GEN LAWS § 9-1-51
<b>Utah</b>	3-Year Window & Age 53 Limit (2016)	UTAH CODE ANN. § 78B-2-308
<b>Vermont</b>	Permanent Window (2019)	VT. STAT. ANN. tit. 12, § 522
<b>Virginia</b>	1-Year Window (1991)	VA. CODE ANN. § 8.01-249
<b>Washington D.C.</b>	2-Year Window (2019)	D.C. CODE § 12-301
<b>West Virginia</b>	Age 36 Limit (2020)	W. VA. CODE § 55-2-15

The vast majority of appellate courts that have assessed the constitutionality of CSA revival laws have upheld them, even in instances where the state has adopted a stricter standard of constitutionality compared to the federal standard.<sup>28</sup> The constitutionality of civil retroactivity at the state level has evolved over time, with states shifting from a traditional vested rights approach to instead granting deference to legislative policy

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<sup>28</sup> See **Arizona**: *John I M Doe v. Big Brothers Big Sisters of Am.*, No. CV2020-017354 (Ariz. Super. Ct. Sept. 28, 2021); *John C D Doe v. Big Brothers Big Sisters of Am.*, No. CV2020-014920 (Ariz. Super. Ct. Aug. 26, 2021), *review denied*, No. CV-22-0003-PR (Ariz. April 8, 2022); **California**: *Coats v. New Haven Unified Sch. Dist.*, 259 Cal.Rptr.3d 784, 792 (Cal. Ct. App. 2020); **Connecticut**: *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 406 (Conn. 2015); **Delaware**: *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011); **Georgia**: *Harvey v. Merchan*, 860 S.E.2d 561, 566 (Ga. 2021); **Hawaii**: *Roe v. Ram*, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at \*9 (D. Haw. Aug. 29, 2014); **Massachusetts**: *Sliney v. Previte*, 41 N.E.3d 732, 737 (Mass. 2015); **New Jersey**: *Coyle v. Salesians of Don Bosco*, 2021 WL 3484547 (N.J. Super. L. July 27, 2021), and *Bernard v. Cosby*, No. 121CV18566NLHMJS, 2023 WL 22486, at \*8 (D.N.J. Jan. 3, 2023); **New York**: *PB-36 Doe v. Niagara Falls City Sch. Dist.*, No. 1015, 2023 WL 1500374, at \*2 (N.Y. App. Div. Feb. 3, 2023) *affirming* 72 Misc. 3d 1052 (N.Y. Sup. Ct. 2021); **District of Columbia**: *Bell-Kerr v. Baltimore-Washington Conference of the United Methodist Church*, No. 2021 CA 0013531B (D.C. Super. Ct.). Cf. **Florida**: *Wiley v. Roof*, 641 So. 2d 66, 69 (Fla. 1994); **Utah**: *Mitchell v. Roberts*, 469 P.3d 901, 903 (Utah 2020).

judgments. Generally, courts have balanced public policy and the legislatures' intent to allow older claims of abuse to proceed against any constitutional rights a defendant may claim in a statutes of limitations defense. Notably, the Georgia and Massachusetts Supreme Courts ruled in favor of CSA claim revival laws despite their state constitutions having express limitations on retroactive civil legislation.<sup>29</sup>

Indeed, every appellate court that has considered the reasonableness of a claim revival statute for sexual abuse survivors under its state constitution has determined the remedial statute was reasonable and upheld it, according to *amicus curiae*'s research. *See, e.g., Doe v. Hartford Roman Catholic Diocesan Corp.*, 119 A.3d 462, 496 (Conn. 2015) (revival law "is a rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child" and the "revival of child sexual abuse victims' previously time barred claims serves a legitimate public interest and accomplishes that purpose in a reasonable way"); *Sliney v. Previte*, 41 N.E.3d 732, 739–40 (Mass. 2015) (revival statute was reasonable and "tied directly to the compelling legislative purpose" of giving access to justice for child sex abuse survivors who do not process their injuries well into adulthood); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258–60 (Del. 2011); *Cosgriffe v. Cosgriffe*, 864 P.2d 776, 779–80 (Mont. 1993) (the discovery statute "has a reasonable relation to the legitimate purpose of the State"); *K.E. v. Hoffman*, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990) ("the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy"); *PB-36 Doe v. Niagara Falls City Sch. Dist.*, No. 1015, 2023 WL 1500374, at

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<sup>29</sup> *See Harvey v. Merchan*, 860 S.E.2d 561, 566 (Ga. 2021) (upholding GA. CODE § 9-3-33.1's 2-year window as constitutional); GA. CONST. art. I, § 1, para. X; *Sliney v. Previte*, 41 N.E.3d 732, 737 (Mass. 2015) (upholding MASS. GEN. LAWS CH. 260, § 4C's revival to age 52 as constitutional); MASS. CONST. pt. 1, art X.

\*2 (N.Y. App. Div. Feb. 3, 2023) *affirming* 72 Misc. 3d 1052 (N.Y. Sup. Ct. 2021) (revival law “was a reasonable response to remedy the injustice to those survivors caused by application of the relevant statutes of limitations”).

Further, modern CSA revival laws do not distinguish between private and public defendants; this is because state legislatures, including in Kentucky, recognize the public interest in stopping predators from sexually abusing children is equally as compelling within public institutions as it is in the private sphere. Similar to Kentucky, after judicial determinations that the revival language was not explicit enough to overcome sovereign immunity, the California and Hawaii legislatures reconvened and passed subsequent legislation explicitly reviving claims against state entities. *See Coats v. New Haven Unified Sch. Dist.*, 259 Cal.Rptr.3d 784, 749 (Cal. Ct. App. 2020); *Roe v. Ram*, No. 14-00027, 2014 WL 4276647, at \*3 (D. Haw. Aug. 29, 2014). In the instant case, the Kentucky Legislature included explicit retroactive and revival provisions that allow claims against third parties and entities, including state entities, that were blocked by the prior SOLs. And, as previously stated, the statute even includes language indicating the section was “remedial” and should be “given the most liberal interpretation.” *See* H.B. 472, 2021 Reg. Sess. (Ky. 2021); KRS § 413.29(7)(a). The Legislature’s purposeful judgment to enact the 2021 Amendments and hold third parties and entities liable should be given deference in applying to Defendant-Appellants in this case, upholding the retroactive and revival provisions in the 2021 Amendments to KRS § 413.29(7), and affirming the Court of Appeals’ ruling.

## CONCLUSION

For these reasons, *Amicus Curiae* CHILD USA respectfully submits that this Court

uphold the Court of Appeals' ruling.

Dated: February 20, 2023

Respectfully submitted,

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## WORD-COUNT CERTIFICATION

I certify that this brief complies with the word limit of the Kentucky Rules of Appellate Procedure 15 and 34(B) because, excluding the parts of the document exempted by RAP 15(E), this document contains 4498 words.

Dated: February 20, 2023

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