

TO: Hon. Luke Clippinger, Chair,
and members of the House Judiciary Committee

FROM: Marci A. Hamilton, CEO & Academic Director, CHILD USA, Fox Professor of Practice, University of Pennsylvania; Alix Boren, Esq., Executive Director, CHILD USA

DATE: March 14, 2019

RE: The Science of Child Sex Abuse and the Constitutionality of Window Legislation

I. The Science of Delayed Disclosure Proves the Compelling Need to Revive Expired Civil Statutes of Limitation

Child sex abuse is a global and national scourge that has flourished in youth-serving organizations and families. On average, 1 in 4 girls and 1 in 6 boys will be sexually abused before their eighteenth birthday.¹ Rarely is the perpetrator “Stranger Danger.” In fact, the vast majority of the abuse is perpetrated by individuals the child knows. See Kenneth Lanning, *Child Molesters: A Behavioral Analysis* 5 (2010), http://www.missingkids.com/content/dam/ncmec/en_us/desktop/publications/nc70.pdf. The effects of child sexual abuse are deep, broad, and lasting in society. The effects include lost earnings; increased healthcare costs; decreased productivity, happiness, and ability to care for children; disrupted or destroyed marriages; drug addiction and its widespread effects and costs and degradation in the comfort that can be drawn from religion itself. See Fiscal Impact of SOL Reform – Fiscal Impact, CHILD USA, <https://www.childusa.org/fiscalimpact> (last updated September, 2018). According to a Johns Hopkins study, child sexual abuse costs the federal government over \$9 billion each year.²

The adverse affects of childhood trauma are indisputable. As explained by the Center for Disease Control (“CDC”), Adverse Childhood Experiences (“ACEs”) “have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity.” U.S. Dep’t Health & Human Services, CDC, *About Adverse Childhood Experiences*, https://www.cdc.gov/violenceprevention/acestudy/about_ace.html (Apr. 1, 2016).³ The ACE Study is one of the largest investigations of the effects of childhood abuse, definitively showing a strong correlation between Adverse Childhood Experiences and later impairments (i.e., disrupted

¹ NSOPW, *Raising Awareness About Sexual Abuse: Facts and Statistics*, U.S. DEPT. OF JUSTICE, <https://www.nsopw.gov/en-US/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#reference>. Other studies have placed the incidence of the sexual abuse of boys as low as 1 in 20, but the 20-25% figure for the abuse of girls has remained constant. See National Center for Victims of Crime, *Child Sexual Abuse Statistics*, NCVC, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics>.

² E. Letourneau et al (Johns Hopkins Bloomberg School of Public Health), *The Economic Burden of Child Sexual Abuse in the United States*, CHILD ABUSE & NEGLECT (May 2018) (explaining that in 2015 alone, the total economic burden of childhood sexual abuse was approximately 9.3 billion in the U.S.)

³ Vincent J. Feletti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults*, 14 Am. J. Preventative Med. 4, 245-58 (1998); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089-96 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

neurodevelopment; social, emotional, and cognitive impairment; disease; disability; etc.). See, e.g., Vincent J. Feletti et al., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults, 14 Am. J. Preventative Med. 4, 245-58 (1998); U.S. Dep't Health & Human Services, CDC, Adverse Childhood Experiences (ACEs), <https://www.cdc.gov/violenceprevention/acestudy/index.html> (Apr. 2016). Robert F. Anda et al., The Enduring Effects of Abuse and Related Adverse Experiences in Childhood, 256 EUR. ARCH PSYCHIATRY CLIN. NEUROSCIE. 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders.”).

Trauma affects childhood victims of sexual abuse or assault in a way that is wholly distinguishable from victims of other crimes. Historically, because of the trauma associated with child sex abuse, 90% of child victims never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court. See, e.g., Centers for Disease Control and Prevention, The Adverse Childhood Experiences (ACE) Study, <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. Dep't Health & Human Svcs Admin for Children & Families, Administration on Children, Youth & Families, & Children's Bureau, Child Maltreatment 2012, available at <http://www.acf.hhs.gov/sites/default/files/cb/cm2012.pdf>. The decades before disclosure give perpetrators and institutions latitude to suppress the truth to the detriment of children, parents, and the public.

Frequently children are groomed by trusted adults, but often so disabled by the trauma they cannot disclose the abuse until much later in life.⁴ As a direct result of the shame and secrecy historically associated with these heinous acts, victims often remain in the shadows—afraid to come forward. See, e.g., Judy Cashmore et al., The characteristics of reports to the police of child sexual abuse and the likelihood of cases proceeding to prosecution after delays in reporting, 74 INTL. J. CHILD ABUSE & NEGLECT, 49, 49-61 (2017) (explaining that delays in disclosing and reporting child sexual abuse to the police are common). In a large study of adults (Hébert et al., 2009) found that: 21.2% of survivors disclosed their abuse promptly; 21.3% disclosed abuse from one month to five years after it occurred; 57.5% delayed disclosure for more than five years. See also 74 INTL. J. CHILD ABUSE & NEGLECT 1, 4 (2017) (suggesting that on average took it took victims over twenty years to disclose their abuse).

In fact, the average age of disclosure in a majority of cases involving childhood sex abuse is fifty-two (52). N. Spröber et al., Child Sexual Abuse in Religiously Affiliated and Secular Institutions, 3 (Mar. 27, 2014), <https://www.childusa.org/search?q=BMC>; CHILD USA, Average and Median Age of CSA Disclosure, (2018), www.childusa.org/law. At least thirty-three percent (33%) of such cases are never reported. See id.; see also Mary-Ellen Pipe et al., Child Sexual Abuse: Disclosure, Delay, and Denial 32 (2013) (“failure to disclose is common among sexually

⁴ See generally BESSEL VAN DER KOLK, THE BODY KEEPS THE SCORE: BRAIN MIND AND BODY IN THE HEALING OF TRAUMA (2014); Penelope K. Trickett et al., The Impact of Sexual Abuse on Female Development: Lessons from a Multigenerational, Longitudinal Research Study, 23 DEVELOPMENT & PSYCHOPATHOLOGY, 453-76 (2011); S. J. Berkowitz et al., The Child and Family Traumatic Stress Intervention: Secondary Prevention for Youth at Risk Youth of Developing PTSD, 52 J. Child Psychol. Psychiatry, 676-85 (Jun. 2011).

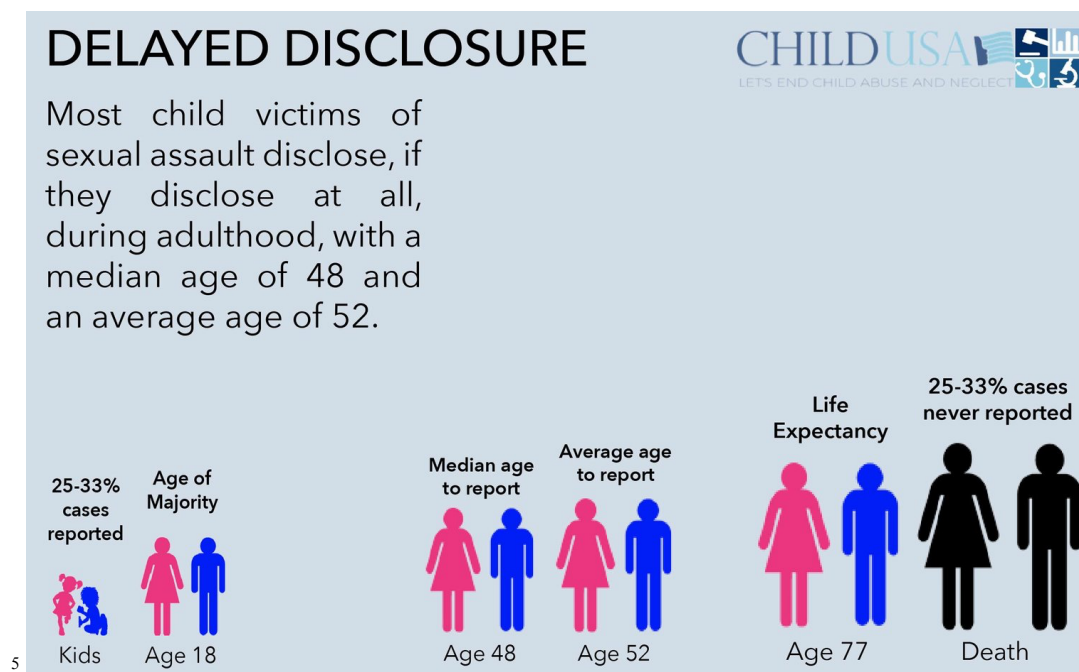
abused children.”). One-third of victims never disclose their abuse. CHILD USA, Average and Median Age of CSA Disclosure, (2018), www.childusa.org/law.⁵

Data shows that Adverse Childhood Experiences (ACES), like childhood sexual abuse, are strongly correlated with later impairments (i.e., disrupted neurodevelopment; social, emotional, and cognitive impairment; disease; disability; etc.). Repressed memories leading to delayed discovery of childhood sexual abuse by a victim is one of the ways in which the brain protects survivors of this heinous crime. It is fundamentally unfair to punish victims for the biologic response to the trauma of childhood sexual abuse by locking the courthouse doors.

II. Under Maryland Law, a Statute Will Be Given Retroactive Effect If that Is the Legislative Intent

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature.” Piper Rudnick v. Hartz, 386 Md. 201, 218 (2005). To determine the legislative intent, the plain language of the statute controls; if the plain language is “unambiguous and consistent with the apparent purpose of the statute, we give effect to the statute as it is written.” Id.; Moore v. State, 388 Md. 446, 452–53 (2005); Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park, 392 Md. 301, 316 (2006); see also CashCall, Inc. v. Maryland Com’r of Fin. Regulation, 448 Md. 412, 431 (2016)) (“A court’s primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny.”).

Statutes of limitations (SOLs) are by definition procedural deadlines governing the timing of filing a criminal prosecution or bringing a civil lawsuit. They are arbitrary procedural deadlines that govern the timing of a claim. Notably, SOLs do not alter the substantive law or burdens on the parties. As in any case, if a plaintiff lacks evidence, a case does not proceed. All



statutes, including SOLs are presumed to operate prospectively unless a contrary intent appears.” *Allstate Ins. Co. v. Kim*, 376 Md. 276, 289, 829 (2003) A statute will operate retroactively under Maryland law with a clear intent requirement. *State Ethics Comm’n v. Evans*, 382 Md. 370, 383 (2004).

Maryland courts rely on four basic principles when determining whether a statute has retroactive effect: (1) absent an indication of contrary intent, statutes are presumed to operate prospectively; (2) “a statute governing procedure or remedy will be applied to cases pending in court when the statute becomes effective; (3) a **statute will be given retroactive effect if that is the legislative intent;**” and (4) even if a statute is intended to apply retroactively, it will not be given that effect if it would impair vested rights, deny due process, or violate the prohibition against *ex post facto* laws. *Johnson v. Mayor & City Council of Baltimore*, 430 Md. 368, 381–82 (2013) (emphasis added).

III. Amending Maryland’s Statutes of Limitations for Child Sexual Abuse to Include a Revival Window Is Both Constitutional and Consistent with the National Trend to Give Survivors Access to Justice

The following twenty-four jurisdictions have held that a retroactive procedural change in law, like revival of a civil SOL, is constitutional: Arizona, California*, Connecticut*, Delaware*, Georgia*, Hawaii*, Idaho, Iowa, Kansas, Massachusetts*, Michigan, Minnesota*, Montana*, New Jersey, New Mexico, New York*, North Dakota, Oregon, Pennsylvania, South Dakota, Washington, Washington D.C.*⁶, West Virginia, Wyoming. An asterisk indicates that the state has revived expired civil SOLs for child sex abuse. The trend in recent cases is to find window legislation constitutional.⁷

⁶ Neighboring Washington D.C. has already passed SOL reform legislation with a revival window in 2019; D.C. ACT 22-593 eliminates the criminal SOL, extends the civil SOL to age 40 with a 5-year discovery rule, and opens a 2-year revival window. This legislation has been approved by the mayor but must be passed by Congress.

⁷ In five states, including Maryland, the matter is still an open question. *Allstate Ins. Co. v. Kim*, 829 A.2d 611, 622-23 (Md. 2003); *Doe v. Roe*, 20 A.3d 787, 797-799 (Md. 2011) (open question). *Catholic Bishop of N. Alaska v. Does*, 141 P.3d 719, 722-25 (Alaska 2006) (open question); *Chevron Chemical Co. v. Superior Court*, 641 P.2d 1275, 1284 (Ariz. 1982); *City of Tucson v. Clear Channel Outdoor, Inc.*, 105 P.3d 1163, 1167, 1170 (Ariz. 2005) (barred by statute, *Ariz. Rev. Stat. Ann. § 12-505* (Ariz. 2010)); *Mudd v. McColgan*, 183 P.2d 10, 13 (Cal. 1947); *20th Century Ins. Co. v. Superior Court*, 109 Cal. Rptr. 2d 611, 632 (Cal. Ct. App. 2001), cert. denied, 535 U.S. 1033;(2002); *Shell W. E&P, Inc. v. Dolores Cnty. Bd. of Comm’rs*, 948 P.2d 1002, 1011-13 (Colo. 1997); *Rossi v. Osage Highland Dev., LLC*, 219 P.3d 319, 322 (Col. App. 2009) (citing *In re Estate of Randall*, 441 P.2d 153, 155 (Col. 1968)); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. at 439-40; *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011); *Riggs Nat’l Bank v. District of Columbia*, 581 A.2d 1229, 1241 (D.C. 1990); *Canton Textile Mills, Inc. v. Lathem*, 317 S.E.2d 189, 193 (Ga. 1984); *Vaughn v. Vulcan Materials Co.*, 465 S.E.2d 661, 662 (Ga. 1996); *Roe v. Doe*, 581 P.2d 310, 316 (Haw. 1978); *Gov’t Employees Ins. Co. v. Hyman*, 975 P.2d 211 (Haw. 1999); *Hecla Mining Co. v. Idaho State Tax Comm’n*, 697 P.2d 1161, 1164 (Idaho 1985); *Peterson v. Peterson*, 320 P.3d 1244, 1250 (Idaho 2014); *Metro Holding Co. v. Mitchell*, 589 N.E.2d 217, 219 (Ind. 1992); *Harding v. K.C. Wall Products, Inc.*, 831 P.2d 958, 967-968 (Kan. 1992); *Ripley v. Tolbert*, 921 P.2d 1210, 1219 (Kan. 1996); *Sliney v. Previte*, 473 Mass 283, 41 N.E.3d 732 (Mass. 2015); *Rookledge v. Garwood*, 65 N.W.2d 785, 790-92 (Mich. 1954); *Pryber v. Marriott Corp.*, 296 N.W.2d 597, 600- 01 (Mich. Ct. App. 1980), *aff’d*, 307 N.W.2d 333 (Mich. 1981) (per curiam); *Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 416 (Minn. 2002); *In re Individual 35W Bridge Litigation*, 806 N.W.2d 820, 830-31 (Minn. 2011); *Cosgriffe v. Cosgriffe*, 864 P.2d at 778; *Alsenz v. Twin Lakes Village*, 843 P.2d 834, 837-838 (Nev. 1992), *aff’d*, 864 P.2d 285 (Nev. 1993) (open question); *Panzino v. Continental Can Co.*, 364 A.2d 1043, 1046 (N.J. 1976); *Bunton v. Abernathy*, 73 P.2d 810, 811-12 (N.M. 1937); *Orman v. Van Arsdell*, 78 P. 48, 48(N.M. 1904); *Gallewski*

IV. The Act's Time-limited Civil Revival Window Is Constitutional Under Both the United States Constitution and the Maryland Constitution

A. A Time-limited Civil Revival Window Is Constitutional Under the United States Constitution

The United States Supreme Court has rejected the proposition that retroactive elimination of a viable civil statute of limitations defense constitutes a denial of due process.⁸ Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945). The United States Supreme Court reaffirmed this principal in Landgraf v. USI Film Prods., 511 U.S. 244, 267, 114 S. Ct. 1483, 1498 (1994), that retroactive civil legislation is constitutional if the legislative intent is clear and the change is procedural. The Landgraf Court explained the duty of judicial deference as follows: “legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” Landgraf, 511 U.S. at 272. The Court went on to observe that “the constitutional impediments to retroactive civil legislation are now modest Requiring clear intent [of retroactive application] assures that [the legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.” Id. at 272-73.

Any presumptions against retroactivity can be readily overcome by express legislative intent. See Republic of Austria v. Altmann, 541 U.S. 677, 692-93 (2004); see also Landgraf, 511 U.S. at 267-68; Chase Sec. Corp. v. Donaldson, 325 U.S. at 311-12. The requirement of clear intent of retroactive application can be readily overcome by express legislative language. “[T]he antiretroactivity presumption is just that — a presumption, rather than a constitutional command.” Republic of Austria v. Altmann, 541 U.S. 677, 692-93 (2004) (declined to extend Hamdan v. Rumsfeld, 548 U.S. 557 (2006)); see also Landgraf, 511 U.S. at 267-68. When retroactive intent is clear, the anti-retroactivity presumption is overcome.⁹

v. Hentz & Co., 93 N.E.2d 620, 624-25 (N.Y. 1950); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069, 1079-80 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781, 786 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415, 423 (Ohio 2010) (open question); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); Owens v. Maass, 918 P.2d 808, 813 (Or. 1996); Bible v. Dep’t of Labor & Indus., 696 A.2d 1149, 1156 (Pa. 1997); McDonald v. Redevelopment Auth. of Allegheny Cnty., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008), appeal denied, 968 A.2d 234 (Pa. 2009); Stratmeyer v. Stratmeyer, 567 N.W.2d at 223; Lane v. Dep’t of Labor & Indus., 151 P.2d 440, 443 (Wash. 1944); Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co., 146 P.3d 914, 922 (Wash. 2006), superseded in part by statute Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass’n v. FHC, LLC, 160 P.3d 1061, 1064 (Wash. 2007), overruled in part by 207 P.3d 1251 (Wash. 2009); Pankovich v. SWCC, 163 W. Va., 259 S.E.2d 127, 131-32 (W. Va. 1979); Shelby J.S. v. George L.H., 381 S.E.2d 269, 273 (W. Va. 1989); Neiman v. Am. Nat’l Prop. & Cas. Co., 613 N.W.2d 160, 164 (Wis. 2000); Society Ins. v. Labor & Industrial Review Commission, 786 N.W.2d 385, 399-401 (Wis. 2010) (open question); Vigil v. Tafoya, 600 P.2d 721, 725 (Wyo. 1979); RM v. State, 891 P.2d 791, 792 (Wyo. 1995).

⁸ C.f., Stogner v. California, 539 U.S. 607, 610, 123 S. Ct. 2446, 2449 (2003) (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).

⁹ It is unconstitutional to revive a criminal law due to the Ex Post Facto clause. That issue is irrelevant to a civil window revival.

B. A Time-limited Civil Revival Window Is Constitutional Under the Maryland Constitution

1. The Revival of a Statute of Limitations Is Constitutional in Maryland with Clear Legislative Intent

The revival of a statute of limitations is constitutional in Maryland. The standard applied by Maryland courts when judging the validity of a retroactive statute differs from the Supreme Court’s standard. Allstate Ins. Co. v. Kim, 376 Md. 276, 293 (2003). Maryland asks “whether retroactive effect would impair vested rights.” Id. In Allstate, the Court of Appeals of Maryland looked at whether retroactive application of a civil tort statute violated the federal or state constitutions. See generally id. Determining that retroactive application of a statute is not per se unconstitutional, the court looked to legislative intent regarding retroactivity. Id. at 289; Waters v. Montgomery County, 337 Md. at 28. In the instant case, there is clear legislative intent to temporarily revive the expired civil statutes of limitations to provide access to justice for victims of child sex abuse.

2. Revival of a Statute of Limitations to Provide Justice for Victims of Child Sex Abuse Is Constitutional Because it Does Not Interfere with Vested Rights

Retroactive effect of a time-limited civil revival window, providing justice for victims of child sex abuse would not impair any vested rights. Vested rights are generally regarded as property rights—or a right in which one has a property interest. To determine whether a right vests, courts will assess whether “it is actually assertable as a legal cause of action or defense or is so substantially relied upon that retroactive divestiture would be manifestly unjust.” Allstate, 376 Md. at 297. In Allstate, where the court determined that retroactive application of a civil statute did not divest the defendant of any vested right, the court explained that a vested right “must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another.” Id. at 298. The Court “[found] no violation of any vested right enjoyed by Allstate by a retroactive application of [the statute at issue].” Id.

Many states hold that the retroactive expansion of an SOL to revive time-barred claims is in no way a violation of a defendant’s due process rights, because there is no vested right in an SOL defense as a matter of law. See, e.g., Chevron Chemical Co. v. Superior Court, 131 Ariz. 431, 440 (1982) (explaining that the right to raise a one year SOL defense instead of a two year defense is not a vested property right garnering Fourteenth Amendment protections, “even if the result may be increased liability on the part of the defendant.”); Peterson v. Peterson, 320 P.3d 1244, 1250 (Idaho 2014) (Determining that the shelter of an SOL is a matter of remedy and not a fundamental right; the lapse of an SOL does not endow citizens with vested property rights in immunity from suit . . . “Where a lapse of time has not invested a party with title to real or personal property, a state legislature may extend a lapsed statute of limitations without violating the fourteenth amendment, regardless of whether the effect is seen as creating or reviving a barred claim.”) (internal citations omitted); Harding v. K.C. Wall Products, Inc., 250 Kan. 655, 668-69 (1992); Pryber v. Marriott Corp., 98 Mich. App. 50, 56-57, 296 N.W.2d 597 (1980),

aff'd, 411 Mich. 887, 307 N.W.2d 333 (1981) (per curiam); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779 (Mont. 1993) (explaining that due process is not violated by the retroactive application of a revival window for a perpetrator of child sexual abuse who has no vested interest in an SOL defense); Panzino v. Continental Can Co., 71 N.J. 298, 304-305, (1976); Lane v. Dept. of Labor & Indus., 21 Wn. 2d 420, 426, 151 P.2d 440 (1944); Vigil v. Tafoya, 600 P.2d 721, 724-25 (Wyo. 1979).

In Doe v. Roe, a case involving the extension of a civil statute of limitations for a claim of child sexual abuse, the court determined that the extension was a procedural and remedial statute, and thus could be given retrospective application. 419 Md. 687 (2011). The Roe court explained, "There are a number of Maryland cases which, in effect, treat ordinary statutes of limitations as dealing with procedure, but these cases involve a reduction of the time within which one asserting a claim must do so." Roe v. Doe, 193 Md. App. 558, 573 (2010) (citing Hill v. Fitzgerald, 304 Md. 689 (1985)); see also Kelch v. Keehn, 183 Md. 140 (1944) (approving a statute reducing a plaintiff's time to file). On appeal, the Doe court held that the extension of the child sex abuse statute of limitations "did not infringe any vested or substantial right of [the] Defendant." 419 Md. at 687 (2011).

Explaining that there is no vested right in a limitations period, the court found no violations of a defendant's perceived right in a statute of limitations defense. The Court noted that while there appears to be "no reported case in Maryland that would mandate the unconstitutionality of [a fully] retroactive application of [the civil SOL]" Doe v. Roe, 419 Md. 687, 698 (2011). The court noted in dicta that "**it is possible**, given the actions of other states, and its own statement in Dua /v. Comcast Cable of Md., Inc., 370 Md. 604 (2002)], that **the Court could conclude** that retroactive application to revive barred causes of action violates Due Process." Doe, 419 Md. at 698 (2011) (emphasis added). This 2011 statement is not in keeping with the national trend to find a retroactive procedural change in law, like temporary revival of a civil SOL to provide justice to victims of childhood sexual abuse constitutional. See, e.g., Peterson, 320 P.3d 1244 (Idaho 2014); Harding, 250 Kan. 655 (1992); Pryber, 98 Mich. App. 50 (1980); Cosgriffe, 864 P.2d 776 (Mont. 1993) (retroactive application of a revival window for a perpetrator of child sexual abuse does not violate due process); Panzino, 71 N.J. 298 (1976); Lane, 21 Wn. 2d 420 (1944); Vigil, 600 P.2d 721 (Wyo. 1979); see also Allstate, 376 Md. at 297 (finding that retroactive application of a statute did not violate Maryland law or divest the defendant of any vested rights).

The introduction of a time-limited "window," reviving the civil SOL for Maryland's child victims does not violate Maryland's Constitution. The revival of an expired, procedural, statute of limitations does not infringe any vested or substantial right. See Doe, 419 Md. at 687. There is no procedural right in a limitations defense. Further, plaintiffs' pursuing claims against their abusers under The Act must still meet all legal and other procedural safeguards. The retroactive application of an SOL merely serves, in these cases, as a practical and pragmatic device to aid the courts in the search for justice. Not only will temporary revival of the expired procedural statute of limitations not interfere with any vested rights, it will also provide much-needed closure to these victims who have been shut out of justice due to the arbitrary procedural deadline.

V. Even If A Court Were to Find that A Defendant Has a Due Process Right Attached to a Statute of Limitations, that Right Is Overcome By the State’s Compelling Interest in Identifying Hidden Child Predators and Protecting Maryland’s Children

The state’s compelling interest in protecting Maryland’s children outweighs any potential due process claim in a statute of limitations. It is long-established that a state has a compelling interest in protecting its children. See, e.g., Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982) (It is clear that a state’s interest “safeguarding the physical and psychological well-being of a minor” is “compelling.”); New York v. Ferber, 458 U.S. 747, 756–57 (1982) (“*First*. It is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is compelling.”); Ashcroft v. Free Speech Coal., 535 U.S. 234, 263 (2002) (O’Connor, J., concurring) (“The Court has long recognized that the Government has a compelling interest in protecting our Nation’s children.”). “There is also no doubt that[] ‘[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.’” Packingham v. North Carolina, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft, 535 U.S. at 244). It is also established that “a legislature may pass valid laws to protect children and other victims of sexual assault from abuse. See id., at 245; accord, New York v. Ferber, 458 U.S. 747, 757 (1982).” Packingham, 137 S. Ct. at 1736 (internal citations omitted).

Maryland follows the Supreme Court in finding a compelling or significant interest in protecting children. See, e.g., In re S.K., 237 Md. App. 458, 469–70, cert. granted, 461 Md. 483 (2018) (explaining that the Supreme Court, Court of Appeals of Maryland, and the Court of Special Appeals of Maryland have all recognized the state interest in child protection). “The State unquestionably has a significant interest in protecting children.” Outmezguine v. State, 335 Md. 20, 37 (1994). See also Blixt v. Blixt, 437 Mass. 649, 656 (2002) (“It cannot be disputed that the State has a compelling interest to protect children from actual or potential harm.”); A.H. v. State, 949 So. 2d 234, 236 (Fla. Dist. Ct. App. 2007) (in assessing “whether the State has a compelling interest in regulating the sexual behavior of minors, this Court recognizes a compelling state interest in protecting children from sexual exploitation.”); In re Dependency of I.J.S., 128 Wash. App. 108, 111 (2005) (“It is well-established that the State has a compelling interest to protect children from harm.”). The compelling interest in protecting Maryland’s children from sexual abuse justifies the enactment of a narrowly tailored time-limited civil revival window.

A. Window Legislation Identifies Hidden Predators, Prevents Future Abuse, and Validates the Victims

A revival window has been successfully implemented in several states:

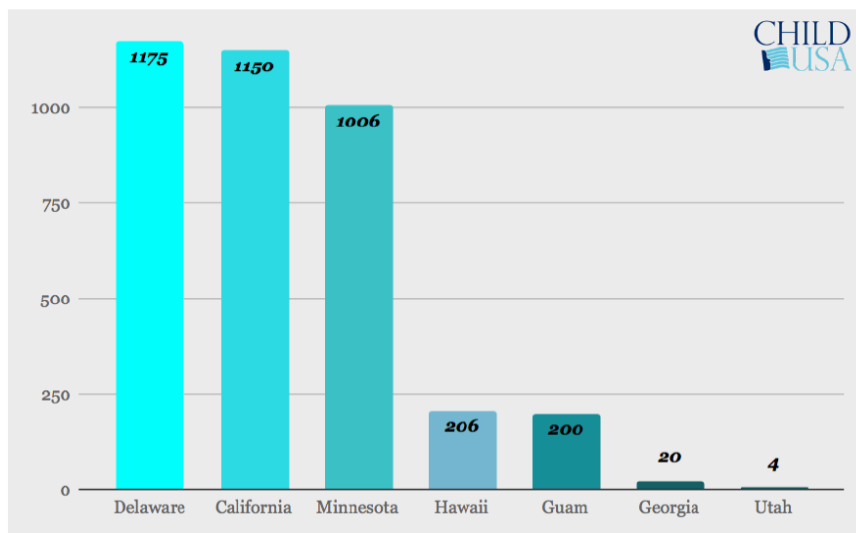
- In California, a one-year window (2003) identified over 300 previously hidden child predators.
- In Delaware, window legislation exposed prolific abuser, pediatrician Earl Bradley, who alone had abused approximately 1,000.

- In Hawaii, a window exposed decades of sexual abuse of young boys by the school psychiatrist at the Kamehameha school; the school had been complicit in a decades-long cover-up.¹⁰
- In Minnesota, John Clark Donahue, co-founder of the Children's Theatre Company was exposed as a serial abuser;¹¹ further, the state's three-year revival window helped to identify over 125 child predators.

The identification of these and other perpetrators enabled parents to prevent their child's abuse. The windows to justice also identified institutions that have engrained practices allowing this abuse. In addition to validating victims of childhood sexual abuse, these windows show the deep importance of creating institutional liability for covering up child sex abuse. Not only does this liability force institutions and organizations to show how they have endangered children (in many instances by complicity in a cover up), it also incentivizes them to alter their practices to be more child protective.

The below chart shows the relative success of revival statutes by state. The number of cases is modest overall. Notably, in all of the states that opened windows to justice, no false claims have been reported in the courts.

Number of Lawsuits Filed when a Time-Limited Revival Window was Open



Increasing access to the civil justice system for survivors of child sexual abuse puts the public on notice about child sexual predators who would otherwise go under the radar. Arrests are only made in 29% of child sexual abuse cases, and for children under six, only 19% of sexual abuse incidents result in arrest.¹² This means that over two thirds of child sexual predators are

¹⁰ <https://www.grandforksherald.com/news/crime-and-courts/4404568-decades-monstrous-sexual-abuse-hawaiiis-famous-kamehameha-school>

¹¹ <https://www.mprnews.org/story/2016/03/22/new-claim-80s-sex-abuse-at-mpls-childrens-theatre>

¹² See H. N. Snyder, Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics, U.S. DOJ, Bureau of Justice Statistics, <https://www.bjs.gov/content/pub/pdf/saycrle.pdf>; Darkness to Light, Child Sexual Abuse Statistics, 1, https://www.d2l.org/wp-content/uploads/2017/01/all_statistics_20150619.pdf.

never arrested, let alone convicted. In fact, the average predator will abuse between 50 to 150 children before he is ever arrested. A.C. SALTER, *PREDATORS: PEDOPHILES, RAPISTS, & OTHER SEX OFFENDERS* (Basic Books, 2003).

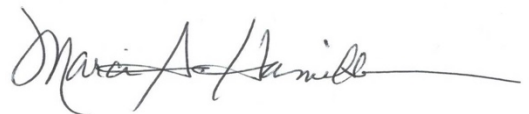
Science shows that perpetrators operate into their elderly years, continuing to move through society with unfettered access to children. When considering that perpetrators continue to abuse later in life in light of the science of delayed disclosure, science establishes a need for lengthy statutes of limitation for child sex abuse and for those with expired claims to be revived. Permitting civil lawsuits through a time-limited revival window identifies hidden predators; by showing communities who the predators, children can better be kept safe from them. This helps both individual victims and society as a whole.

A time-limited revival window is narrowly tailored to the end of protecting Maryland's children from sexual abuse and validating victims of childhood sexual abuse.

A Time-limited Civil SOL Window Will Protect Maryland's Youth and Provide Long-Awaited Justice to Victims

A Time-limited Civil SOL Revival Window for Victims of Child Sex Abuse is the only way to provide justice for the victims of abuse in Maryland and to prevent future child sex abuse. With clear legislative intent, it is constitutional to amend Maryland's statutes of limitations for child sex abuse to include a temporary civil revival window under both Maryland and Federal Law. Such legislation is consistent with the national trend to give survivors access to justice.

Sincerely,



Prof. Marci A. Hamilton
Founder, CEO & Academic Director
CHILD USA



Alix P. Boren, Esq.
Executive Director
CHILD USA

3701 Chestnut Street, 6th Floor
Philadelphia, PA 19104
(215) 539-1906



www.childusa.org