

CHILD USA

THE THINK TANK FOR CHILD PROTECTION

TO: Senator Karl Rhoads, Chair
and members of the Committee on Judiciary

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

RE: S.B. 2316, extension of civil statutes of limitations for child sex abuse and S.B.
2109 prompt trial for child sex abuse victims

DATE: January 29, 2020

Mr. Chairman, members of the committee, my name is Professor Marci Hamilton. Thank you for asking me to submit testimony.

I commend you and the Committee for taking up S.B. 2316 and S.B. 2109.

S.B. 2316 would extend the civil statute of limitations and give survivors of child sex abuse more time to file a civil suit. S.B. 2109 would prioritize the speedy resolution of a case involving a child victim of sexual abuse. If passed, this legislation will bring Hawaii closer to being a leader in the fight to protect children's rights.

By way of introduction, I am the Founder, CEO, and Academic Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where I am the Robert A. Fox Professor of Practice. I am the author of *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 the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading organization tracking the SOLs for child sex abuse, and provides an analytical overview of statute of limitations reform for child sex abuse, as well as other cutting edge issues related to child protection, at www.childusa.org/law.

S.B. 2316 would allow more victims in Hawaii to access justice

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 naming their perpetrators publicly for fear of retaliation and from obtaining justice.

There is a worldwide epidemic of child sex abuse, with at least one in four girls and one in six boys sexually assaulted before they turn 18. The vast majority of claims expire before the victims are capable of getting to court. This bill would protect the children of Hawaii by making it



possible for victims to come forward and identify their perpetrators in a court of law. It would also shift the cost of abuse from the victims to the ones who caused it and bring delayed, but still welcome, justice to these victims. SOL reform validates victims and puts perpetrators and institutions on notice that the state stands with the victims.

There are untold numbers of hidden child predators in Hawaii who are preying on one child after another because the existing SOLs provide that opportunity. Current Hawaii law provides that a claim for injury suffered as a result of childhood sexual abuse be commenced within the later of age 26 or 3 years after the victim discovers or reasonably should have discovered that their injury or illness was caused by the abuse. S.B. 2316 would extend the civil SOL, allowing more victims of childhood sexual abuse to come forward when they are ready. By extending the SOL both prospectively and retroactively, access to justice for some past and all future victims will be available; this will also greatly reduce the present danger to Hawaii's children.

There are three compelling public purposes served by child sex abuse statute of limitations reform:

- 1) SOL reform *identifies previously unknown child predators to the public so children will not be abused in the future;***
- 2) It *shifts the cost of abuse from the victims to the predators and those that hid them; and***
- 3) It *educates the public about the prevalence and harm from child sex abuse so that families and the legal system can protect victims more effectively.***

The net result is that society as a whole comes together to support the traumatized victims and to heal itself. This is a vital step in the process toward children's civil rights and human rights overall.

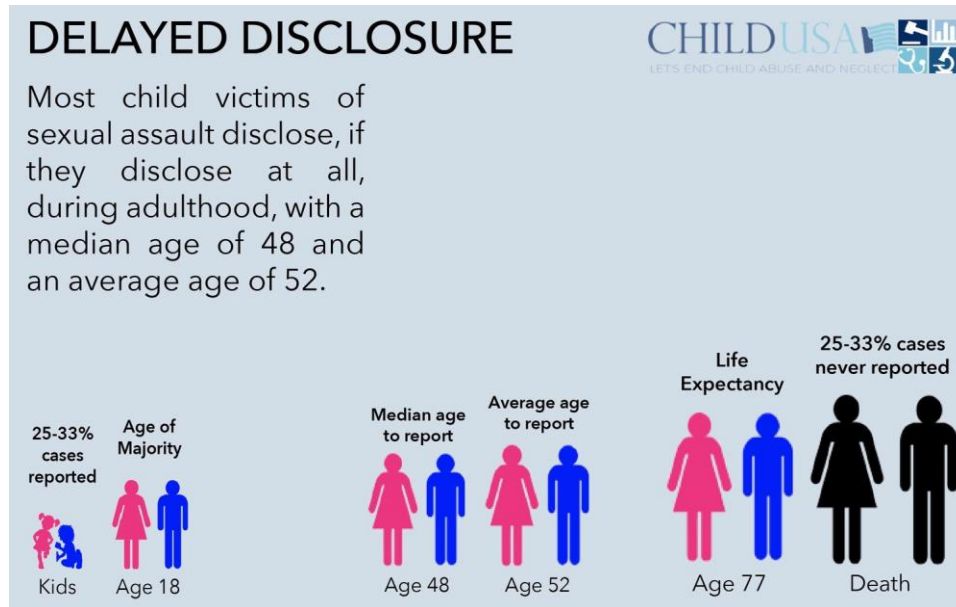
Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states have shut down most cases. That is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

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. Extending the civil SOLs for child sex abuse ensures that justice will be made available to more victims. Short SOLs for child sex abuse play into the hands of the perpetrators and the institutions that cover up for them, and disable victims' voices and empowerment.

Based on the best science, age 52 is the average age of disclosure for victims of child sex abuse.¹ 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.

¹ Delayed discovery studies available at *Delayed Disclosure of Child Sex Abuse*, CHILDUSA.ORG (last visited Jan. 28, 2020), available at www.childusa.org/delayed-disclosure.

As the following graphic demonstrates, the average age for disclosure of child sex abuse is age 52 and the median age is 48. Extending the statutes of limitations for child sexual abuse, which is a growing national trend, makes justice more accessible to many more residents. While the proposed extension of the civil to age 58 is an improvement, the best way to ensure justice for all victims is to prospectively eliminate the civil statutes of limitation. Ten states already have no civil statute of limitations for child sex abuse for at least some claims, having eliminated the civil SOLs prospectively.²



Studies establish that child sex abuse survivors have an inherently difficult time coming forward. Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.

Because of its lifelong effect on health and well-being that can erect high barriers to disclosure and the fact that many perpetrators pursue and assault children even in their elder years, childhood sexual abuse needs to be added to the list of laws that should not be subject to an SOL, like kidnapping, fraud and embezzlement, war crimes, treason, and murder in the United States.

There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil SOLs. At this point, 10 states have eliminated civil SOLs and 14 states have extended civil SOLs past 50 years of age. For an analysis of the SOL reform movement from 2002 through 2019, see CHILD USA's 2019 SOL Report.³ 2019 was a banner year for SOL reform with 23 states and Washington D.C. improving

² AK, CT, DE, FL, IL, ME, MN, NE, UT, and VT. For more information of civil SOL elimination, visit *Statute of Limitation (SOL) Reform by Jurisdiction: Who Has Done the Most for Victims of Child Sex Abuse?*, CHILDUSA.ORG (last visited Jan. 28, 2020), available at www.childusa.org/best-sols.

³ 2019 SOL Report, CHILDUSA.ORG (last visited Jan. 28, 2020), available at www.childusa.org/sol-report-2019.

their SOLs for child sex abuse.⁴ In January of 2020 alone, 19 states are already considering SOL reform.⁵

Hawaii has positioned itself as a leader in the SOL reform movement, by enacting the longest civil revival window, during which survivors of child sex abuse were and still are able (until April 24, 2020) to file civil claims for past abuse that would have otherwise been time-barred. That being said, Hawaii's current civil SOL which expires at age 26 or 3 years after discovery of the abuse is relatively short in comparison to the rest of the states.⁶ This proposed civil SOL extension to age 58 is in line with the recent trend eliminate the civil SOL and to give victims into their 50's to come forward in accordance with the delayed disclosure of abuse science.

S.B. 2109 reflects the interests of federal law and Hawaii to protect children from traumatic court experiences

Child protection is one of the most critical interests and responsibilities of government.⁷ “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.’”⁸ Courts widely accept that children are often retraumatized by exposure to court proceedings relating to the traumatizing event of their own abuse.⁹ In recognition of this fact, state courts across the nation, including Hawaii, have established laws designed to protect child victims of sexual abuse in court proceedings.¹⁰ S.B. 2109 would protect child sex abuse victims by prioritizing the speedy resolution of cases relating to their abuse. This legislation is an important step forward in recognizing children's rights and the value of protecting child sex abuse victims in traumatic legal proceedings.

Once again, I commend you for supporting this legislation which is desperately needed to help victims of childhood sexual abuse, and for taking up the cause of child sex abuse victims.

⁴ For more information on SOL reform in 2019, visit *2019 Summary of Child Sexual Abuse Statutes of Limitations (SOLs): Introduced, Signed into Law and State Laws by Category*, CHILDUSA.ORG (last visited Jan. 28, 2020), available at www.childusa.org/2019sol.

⁵ For the latest updates on the current landscape of SOL reform in 2020, see *2020 SOL Reform Activity*, CHILDUSA.ORG (last visited Jan. 28, 2020), available at www.childusa.org/2020sol; *Current Laws for Child Protection*, CHILDUSA.ORG (last visited Jan. 28, 2020), available at www.childusa.org/law.

⁶ The majority of states give victims up to at least age 35 to file civil lawsuits. CHILD USA’s 2019 SOL Report, available at www.childusa.org/sol-report-2019.

⁷ See *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982); *Ashcroft v. Free Speech Coal*, 535 U.S. 234, 263 (2002) (O’Connor, J., concurring); *N. Y. v. Ferber*, 458 U.S. 747, 761 (1982). See also *Rights of Child Victims*, US Dept. of Jus. (last visited Jan. 29, 2020), available at <https://www.justice.gov/criminal-ceos/rights-child-victims>.

⁸ *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017) (citing *Ashcroft*, 535 U.S. at 244).

⁹ See generally Myrna S. Raeder, *Enhancing the Legal Profession’s Response to Victims of Child Abuse*, 24 Crim. Just. 12 (2009); Lisa Conradi, *Supporting the Mental Health of Trauma-Exposed Children in the Welfare System*, 34 ABA CHILD L. PRACTICE 1 (Jan. 2015); Naila S. Awan, *Balancing a Child’s Right to be Heard with Protective Measures Undertaken in “the Best Interests of the Child”*: Does the International Criminal Court Get it Right?, 35 CHILD. LEGAL RTS. 98, 103 (2015).

¹⁰ HAW. REV. STAT. § 626-1; see also 18 U.S.C. § 3509; ALASKA STAT. ANN. § 12.45.046 (West 1994); ARIZ. REV. STAT. ANN. § 13-4253 (1985); CAL. PENAL CODE § 1346; MONT. CODE ANN. § 46-15-320 (West 2019); OR. REV. STAT. ANN. § 44.545 (West 1991); WASH. REV. CODE ANN. § 10.52.100 (West 1992); ALA. CODE § 15-1-2; LA. STAT. ANN. § 15:283.

Hawaii's children deserve SOL reform and court reform to protect children today and into the future. Extending the civil SOL is a positive step for Hawaii's children and families.

Please do not hesitate to contact me if you have questions regarding SOL reform or if I can be of assistance in any way on other child protection issues.

Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal line extending to the right.

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

3508 Market St. #210
Philadelphia, PA 19104