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FROM: Marci A. Hamilton

RE: Statute of Limitations Reform for Child Sex Abuse Victims

DATE: July 20, 2018

Introduction

I am the Robert A. Fox Leadership Program Professor of Practice at the University of Pennsylvania and the Founder, CEO, and Academic Director of CHILD USA, which is an interdisciplinary think tank dedicated to the prevention of child abuse and neglect. I am also the author of *Justice Denied: What America Must Do to Protect Its Children*, 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, www.childusa.org, is the leading organization to track the SOLs for child sex abuse, with frequent updates as SOLs change.

Once upon a time there was a wall of ignorance and secrecy constructed around child sex abuse. The twenty-first century is the first century in which we have successfully broken through that wall only to discover a horrifying sight: millions of adults who were sexually abused as children have been living in the darkness of shame, intimidation, and humiliation. We had heard of “incest” and “sex abuse” but they were sporadic, individual accounts and the media declined to cover the issue for fear of offending readers. The result: there was no pattern in front of us. Starting in 2002, the first glimpse of the scope of abuse in the Catholic Church was revealed by the *Boston Globe*'s Spotlight investigative reporting team. That investigative report brought to the forefront the paradigm of an institution putting its image and power ahead of children's safety.

The outline of the child sex abuse problem across other institutions and society began to emerge, and the institutional scandals piled up, with more institutions and perpetrators revealed to the public each succeeding year. There was the sexual abuse by football coach Jerry Sandusky at the Pennsylvania State University, and then the abuse in numerous private boarding schools, and most recently the sexual abuse of hundreds of elite gymnasts by Dr. Larry Nassar. In every instance, children were endangered by adults who put their interests second and by a justice system that was indifferent to child sex abuse victims.

An arbitrary and technical legal rule has kept survivors from naming their perpetrators publicly or obtaining justice. They are called “statutes of limitation,” or SOLs. The only ones who benefit from secrecy are perpetrators and institutions that avoid accountability for the devastation they caused.



Society and survivors are the ones who pay for delayed and denied justice. SOLs are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. Perpetrators and institutions benefit from short SOLs and until recently, most states and countries shut down most cases, and that is a major reason we knew so little about the epidemic of sex abuse.

There is an ongoing political struggle by victims of child sex abuse to obtain access to justice for victims in three categories: those abused in the past; in the present; and in the future. They are fighting for SOL reform.

There are three compelling public purposes served by SOL extension, elimination, and revival:

- (1) SOL reform *identifies previously unknown child predators to the public so children will not be abused in the future;***
- (2) It gives child sex abuse survivors *access to justice;* 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 the 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.

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. Therefore, 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.

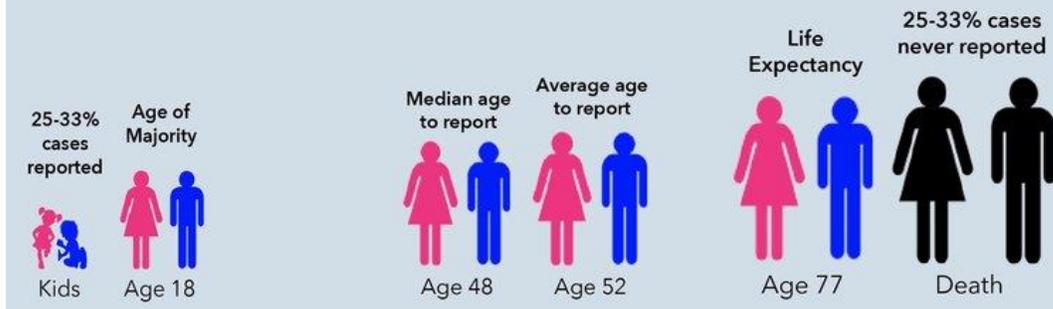
Perpetrators and institutions benefitted from short SOLs and until recently, most states shut down most cases. That is a major reason we knew so little about the epidemic of sex abuse. There is a global movement to eliminate and revive expired SOLs to create access to justice and identify hidden child perpetrators.

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.

The average age for disclosure of child sex abuse is age 52. The median age is 48, as demonstrated in the following chart:

DELAYED DISCLOSURE

Most child victims of sexual assault disclose, if they disclose at all, during adulthood, with a median age of 48 and an average age of 52.



In the past, the SOL would typically be years from the date of the act. Therefore, if a child was sexually assaulted at age 8, the SOL would expire at age 10. Therefore, SOLs almost always expired before the survivor was ready to disclose. That set up a destructive dynamic in which victims suffered in silence, perhaps finally found the will to speak, but then were told it was too late. That meant the perpetrator continued to operate in secrecy, institutions continued to protect their brand by suppressing the truth, and victims were re-victimized by a system geared more to the needs of the child predator than the victim. Finally, it has meant that victims (or the taxpayers) are stuck bearing the cost of the abuse, while perpetrators and institutions are unburdened by their crimes and negligence.

Without SOL reform, the victims bear the cost of the abuse, the predators find fresh prey, and institutions guard ugly secrets that endanger children. In contrast, with SOL reform, the cost of abuse is shifted to the perpetrators and the institutions that caused it, the victims are validated, and the predators are identified. The harm done can be devastating to the point that a child needs decades to rise from it: There is empirical data that indicates an association between sexual abuse victimization and grave short and long-term outcomes. In comparison with those who were not sexually abused, victims were found to experience greater “anxiety and depression, somatic complaints, social withdrawal, anger, and aggressive and sexual behavior problems.” Hundreds of other studies have established that child sex victims are at higher risk for and often suffer from health problems such as depression, alcoholism, illicit drug use, unintended pregnancies, and sexually transmitted diseases. For example, a recent study found that the severity of the child abuse often correlates with the severity of the subsequent alcohol abuse.

Furthermore, these victims also experienced greater levels of anxiety, depression, and anger, and were more likely to act “impulsively” as a response to these emotions. This impulsiveness could take the form of abusing alcohol “as a means of coping with or anesthetizing” those feelings. Additionally, another study found a “direct neural mechanism, via alteration of the brain’s fear circuitry...[where] maltreatment [led] to anxiety and depressive symptoms by late adolescence.” In addition, “[a]mong the more troubling long-term outcomes of sexual abuse, particularly for female victims, is an increased risk of further sexual victimization later in life- often in apparently unrelated circumstances... In one study,

women who had experienced sexual abuse as a child were twice as likely as previously nonvictimized women to be raped.” In short, the harm can be devastating.

So how is it so many children have been capable of being so severely abused for so long right under our noses? One answer is that the adult seeking sex with a child gets the most access by being the “nice guy” and by situating himself in circumstances where children are readily available. (The overwhelming majority of child sex abusers are male.) In the words of former FBI child sex abuse expert Kenneth Lanning, “A pedophile may seek employment where he will be in contact with children (e.g., teacher, camp counselor, babysitter, school-bus driver) or where he can eventually specialize in dealing with children (e.g., physician, dentist, clergy member, photographer, social worker, law-enforcement officer).” In other words, they choose vocations and avocations that will create access to children. Perpetrators can be very cunning and patient. They are also cunning and use every tool they can find to overcome the child’s defenses, which are poorly matched to the experience, knowledge, and trickery of the abuser. They often seek out children in difficult family settings, and then overmatch them with their age advantage, their personalities, and gifts like attention, toys, candy, trips, and anything else the child might need. The child doesn’t know what hit them.

Contemporary science strongly refutes the notion that a child knows he or she is being injured at the time of the sexual abuse. It is also a fact that some victims suffer a lifetime of suffering and some do not. As adults, we understand that a child who is being sexually abused is being hideously harmed. Yet, we know that only because adults create a frame of reference for assessing sexual intrusion; we understand that children are at the mercy of adults who wield power over them; we understand that there are sexual intrusions that are illegal; and that the acts of sexual intrusion may generate sensations of pleasure even when they occur in these illegal situations. In other words, as mature adults, we have developed an understanding that distinguishes love from sex acts; desire from self-control; and adults from children.

Children may know they are being touched, but that does not mean they understand that they are being injured. Children can’t understand sex, or sex abuse, or that they are being permanently changed by the act of a trusted member of the clergy or other trusted adult. Rather, they are deeply confused by these adults who typically groom them with attention, toys, and favors in contexts where the adult is required to be trusted.

A typical child predator needs to get past other adults to isolate the child and initiate the abuse. What better way than becoming the man or woman the parents want their children to know and trust? Until very recently, parents would pray that their child receive special attention from their admired clergy, whether priest, pastor, rabbi, or youth program director. It was such an honor. The same goes for the coach or teacher that could help the child find success and scholarships. The successful adult who is also likable and nice on the surface has been a winning combination for abusers patiently operating to garner child access. When parents put their guard down, that’s when they pounce.

That means that parents and others interested in protecting children--from clergy to teachers to coaches--cannot trust their instincts. True, this is a harsh lesson, but one that is necessary.

The child predator already has an enormous power advantage over a child given the age difference between them, but for many that is not enough. In many cases, child predators use alcohol and/or drugs to reduce the child’s resistance to their advances. Sadly, victims also often self-medicate in the years following the abuse with alcohol or drugs. When they finally can pick up their heads and

focus on their problems and start to deal with the root cause, they may ask about justice. If the state responds by shutting them out through unfairly short SOLs, it is a form of revictimization, a message that once again they are somehow responsible for their suffering. Why wake up from your self-medicated haze if the system is going to tell you that you took too long and it doesn't care? Thus, the closing off of the justice system to victims can be a cog in the wheel of ongoing substance abuse.

Child pornography is often interwoven into the abuse experience—at the grooming stage and in terms of adding to the damage. It is common for pedophiles to use pornography to groom their next victims. As the Department of Justice has documented:

Grooming usually involves normalizing sexualized behavior in the offender-child relationship by introducing increasingly intimate physical contact by the offender toward the victim, very gradually sexualizing the contact, and sometimes using child pornography to break down the child's barriers. This gradual process and the relationship of trust and authority that the offender usually holds over the child, along with the child's immaturity and subservience, serves to break down the child's resistance. These children have a difficult time understanding what is happening to them and why and have very little control over their circumstances.

The creation, distribution, and viewing of child pornography add to the harm already done as part of the child sex abuse and assault that are typically the subject of the pornography. To quote the U.S. Department of Justice:

“. . . knowing that all copies of child pornography images can never be retrieved compounds the victimization. The shame suffered by the children is intensified by the fact that the sexual abuse was captured in images easily available for others to see and revictimizes the children by using those images for sexual gratification. Unlike children who suffer from abuse without the production of images of that abuse, these children struggle to find closure and may be more prone to feelings of helplessness and lack of control, given that the images cannot be retrieved and are available for others to see in perpetuity. They experience anxiety as a result of the perpetual fear of humiliation that they will be recognized from the images.”

The effects are often long-term. For example, not only is the original victimization damaging, but ongoing fears throughout a pornography victim's life can exist. “One account given . . . by a victim of abuse images talked of feeling fearful every time the mail arrived, overwhelmed with anxiety that the photographs would be in the post and that her mother would see them.” This anxiety increases geometrically when the images are on the Internet.

While a child's natural environment may already be a host of anxiety, a child's fear that strangers will view the images extends not only to people that they see regularly, but also to those in even the most distant locations, indeed, anyone with whom they come into contact. In other words, they cannot “get away from it all.” In fact, the mere mention of the Internet can trigger a child recollection of the abuse. In a technological age, it is impossible for one to not be constantly accessing, or reminded of, the World Wide Web. What may seem like a mere statement to one person, could act as a trigger of revictimization for a child of abuse. Thus, not only the creation, but also the distribution, sharing, and viewing of child pornography, causes serious harm to the victims. Sadly, child pornography victims thus may live lives of “sickening anticipation,” which makes the abuse victim who is also a pornography victim particularly vulnerable and greatly in need of a legal system that validates and supports rather than excludes.

I. Summary of Current State of SOL Reform in the United States

Until recently, the law has been structured so that child predators rarely had to face the legal system despite the heinous quality of their crimes. This state of affairs was convenient, because who wanted to think about child sex abuse? It was basically unthinkable. So any hints about abuse in the media or elsewhere were typically shoved away and forgotten. It was just too awful. The legal system had a symbiotic relationship with these attitudes and the result was no justice but also no information about who the hidden predators are.

Since 2002 and the disclosure of systemic cover up of clergy sex abuse in the Boston Archdiocese, dozens of states have considered and passed significant SOL reform. In 2018 alone, 15 states considered bills. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil SOLs.

At this point, well over half of the states have eliminated the SOLs for at least the most serious child sex abuse crimes. Some states attempted to revive expired criminal SOLs, but the United States Supreme Court, in a very close decision, held that it is unconstitutional to revive an expired criminal SOL. *Stogner v. United States* (1993). Therefore, for the victim whose criminal SOL has expired, the only option is to file a civil suit.

Forty-one states have eliminated at least the most serious criminal charges: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

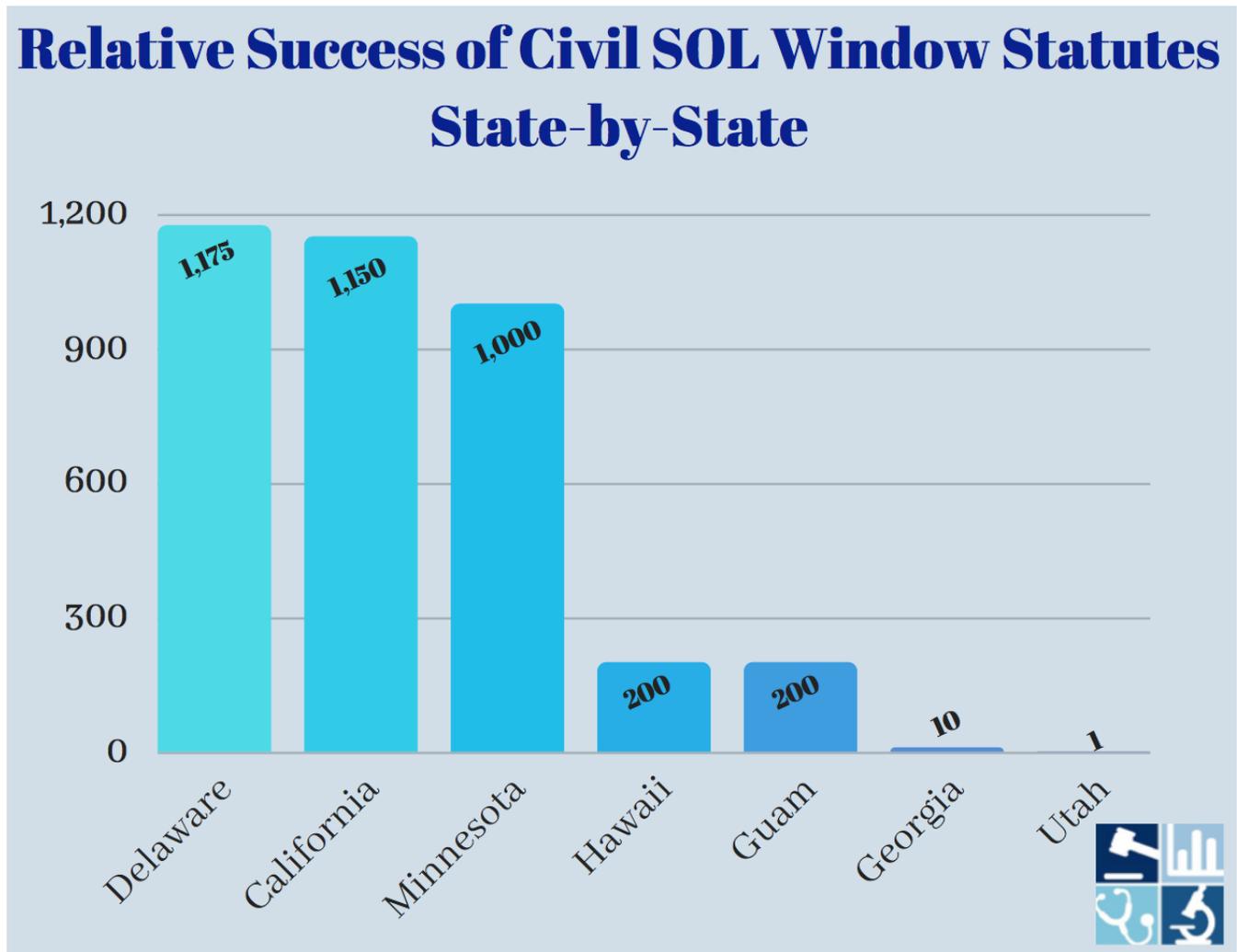
Nine states have eliminated the civil SOLs prospectively: Alaska, Connecticut, Delaware, Florida, Illinois, Maine, Minnesota, Nebraska, and Utah.

Nine states have revived expired civil SOLs:

- California (1 year)
- Connecticut (all victims under the age of 48)
- Delaware (2 years)
- Georgia (2 years)
- Hawaii (4 years + 2 years)
- Massachusetts (all victims under the age of 53)
- Michigan (90 days)
- Minnesota (3 years)
- Utah (all victims under age 50; any age for 2 years)

The states that have revived expired SOLs have not experienced a large number of cases. As compared to the state population, the numbers have been quite small. There have been many previously unidentified perpetrators identified. In California, during 2003 when the civil SOL was expired, 300

predators were identified to the public that had not been identified before. The following chart reveals how many victims came forward when each state revived the expired civil SOL for a set period of time (in other words, the state opened a “window” for victims who were otherwise shut out of the system).



II. The Reasons to Pass SOL Reform for Child Sex Abuse Victims

- A. Identify hidden child predators who operate in secret when victims are barred from court by the SOLs.
- B. Access to justice for child sex abuse victims who have been denied access due to historically short SOLs.
- C. Educate the public on the prevalence of sex abuse across the culture.
- D. Heal the victims and the society as a whole and prevent future abuse.

III. Commonly Raised Objections and Responses to SOL Reform

Objection: Child sex abuse rarely occurs and, therefore, legislators need to make other issues a priority.

Response: The statistics indicate otherwise: 1 in 4 girls and 1 in 5 boys will be sexually abused.

Objection: Children will get over the abuse eventually and so lawsuits are not needed for healing.

Response: Childhood trauma leads to a wide range of physical and psychological ailments and extraordinary costs on society.

Objection: Elimination of the SOLs will result in an avalanche of claims overwhelming prosecutors and putting defendants at a serious disadvantage.

Response: This has not happened in any state that eliminated the SOLs, whether through prospective elimination or revival of expired civil SOLs. The effect of the prospective elimination or extension of the civil and criminal SOLs are spread out over time. When states have revived expired SOLs, the result has been a significant number of cases filed that disclose numerous child perpetrators previously unidentified, but in raw numbers a relatively small number of cases as this chart shows.

Objection: SOL reform is burdensome, because it will generate many false claims.

Response: According to reputable studies conducted by scientists, false claims by victims about sexual abuse are extremely rare. In cases brought under California's window, there were about five total false claims from over 1,000. Even in those rare cases, the burden of proof of the abuse rests with the victim bringing the claim. It is much more likely that a child will recant actual abuse rather than make up a false claim.

Objection: It is unfair to revive expired claims because memories fade and evidence is stale.

Response: Plaintiffs bear the burden of proof in civil cases, and prosecutors bear the burden in criminal cases. They must have facts to support their claims, or a case is dismissed before the defendants must put on a defense. For most victims, the events are seared on their memories. Many institutions have records, employees, recipients of their services that can corroborate the victim's claims. The justice system works, and opening a revival window to civil lawsuits based on past abuse does no more than grant *access* to the system.

Objection: Window legislation that allows victims to file retroactively revived lawsuits has led to all of the diocesan bankruptcies.

Response: Most of the diocesan bankruptcies (Davenport, Fairbanks, Milwaukee, Portland, Spokane, and Tucson) occurred in states with no such legislation. Only the Wilmington, Minneapolis, and San Diego bankruptcies followed enactment of SOL reform legislation. San Diego was forced out of bankruptcy court because of its failure to disclose its actual and ample wealth.

Objection: Most child sex abuse victims are male.

Response: At least 60.2% (3 of 5 child sex abuse victims) are female.

Objection: SOL reform unfairly targets religious organizations.

Response: No SOL reform has been limited to any one or all religious organizations and there are countless other institutions that have protected abusers including schools, hospitals, sports programs and juvenile facilities.

Objection: Most victims are abused in the Catholic Church.

Response: Abuse in the Catholic Church constitutes a small percentage of all sex abuse cases. Most victims are abused within families or by close family associates.

Objection: Revival of an expired SOL is unconstitutional and a violation of due process or the state constitution's Remedies Clause (if the state has one).

Response: It was unconstitutional in the nineteenth and early 20th centuries. It's not now.

Objection: Statutes of limitations exist to further fairness and due process. It is unfair to make institutions responsible for large numbers of sex abuse cases decades after they occurred.

Response: When the institutions covered up the sex abuse in the first place, it was illegal. There is no unfairness in making them responsible. Moreover, murder has no SOL. Along the same reasoning, child sex abuse should not either, because it is so difficult for the victim to come forward.

I applaud you for pursuing access to justice for child sex abuse victims. This is one of the most important movements for child protection in history. Please do not hesitate to contact me if you have questions regarding SOL reform or if I can be of assistance in any other way.

Sincerely,



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