

February 26, 2018

Hon. Jason Spencer  
Georgia House of Representatives  
501-D Coverdell Legislative Office Building  
Atlanta, GA 30334

RE: Hidden Predator Act of 2018

Dear Rep. Spencer:

On behalf of CHILD USA, I am submitting this analysis of the Hidden Predator Act of 2018, which would extend the civil statute of limitations (“SOL”) for child sex abuse and create a window that would apply to perpetrators and the institutions that endangered children.

By way of introduction, I am the Fox Professor of Practice at the University of Pennsylvania and the CEO of CHILD USA, which is the leading think tank dedicated to ending child abuse and neglect and the leader in SOL reform data and analysis. My book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), makes the case for statute of limitations reform in the child sex abuse arena and has been relied upon by lawmakers in the United States and other countries including Scotland and Australia.

A majority of states in the United States has been extending, eliminating, and reviving expired civil SOLs since 2002, when the *Boston Globe* disclosed the parameters of institution-based abuse with the *Spotlight* series on sexual abuse in the Boston Archdiocese. At this point, 38 states have eliminated the criminal SOL for at least the most serious child sex crimes. Since 2002, 19 states have extended and/or eliminated the civil SOLs, while 8 states have revived expired SOLs. Georgia is well behind the curve.

Because Georgia only recently loosened the criminal SOLs in 2012, and expired criminal SOLs cannot be revived, the only venue left for justice and identifying perpetrators for the vast majority of Georgia’s victims lies in the civil courts. Georgia did join a supermajority of the states and eliminate the criminal SOL in 2012. But the civil SOL remains one of the worst 5 in the United States: age 23 with a 2-year discovery rule. This is much too short for most victims.



Most victims disclose, if they disclose at all, during adulthood, with the median age of 48.

<b>Birth</b>	<b>18</b>	<b>48</b>	<b>77</b>	<b>Death</b>
Up to 33% report in childhood <sup>1</sup>	age of majority	median age to disclose	life expectancy	25%-33% never disclose <sup>2</sup>

While Georgia did have an open window from 2015-17, it was only good against the perpetrator (not the responsible institutions). As a result, the original Hidden Predator Act led to the filing of only approximately a dozen cases, making it one of the least successful windows in the United States. The cases that were filed did reveal, however, that there are institutions in Georgia that have negligently and recklessly permitted children to be sexually abused.

Under current law, the burden of the abuse rests on the victims and the taxpayers (when victims must be on Medicaid to cover the cost of the effects of sex abuse). Sex abuse often causes depression, PTSD, substance abuse, opioid addiction, and other health problems. **The Hidden Predator Act of 2018 would shift the cost of the abuse from the victims and the taxpayers to the individuals and institutions that caused the abuse.** This is only fair.

The Hidden Predator Act of 2018 (1) extends the civil SOL to age 38 for abuse after July 1, 2015; (2) increases the discovery rule to 4 years for abuse after July 1, 2015, and (3) institutes a one-year window that would apply to perpetrators and institutions.

The extension of the civil SOL and the discovery period are well-drafted and likely to achieve the end of identifying the hidden pedophiles and traffickers in Georgia and shifting the cost of the abuse from the victims and taxpayers with one exception. The language that states that the extension only applies to “abuse committed on or after July 1, 2015,” means that once the window expires after one year, Georgia snaps back to being one of the states that is most restrictive as the oldest person to be able to bring a claim will be one who was 16 as of July 1, 2015. All victims who were over 16 on July 1, 2015, will be limited to the age 23 limit. The extension and new discovery limit should apply to any sex abuse against a child so long as the SOL had not yet expired as of the date of enactment.

The window has one flaw: it does not make institutions accountable for their failure to protect children unless there is proof that the entity “intentionally or with conscious indifference concealed evidence of such conduct.” This is an unreasonable standard and has never been adopted by any other state. If Georgia intends to protect its

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<sup>1</sup> KAMALA LONDON ET AL., CHILD SEXUAL ABUSE: DISCLOSURE, DELAY, AND DENIAL, Ch. 2 (Margaret-Ellen Pipe, et al eds., 2007) ([approx. 1/3 disclose in childhood](#)); *Child Sexual Abuse Disclosure: What Practitioners Need to Know*, Darkness to Light, [https://www.d2l.org/wp-content/uploads/2016/10/ChildSexualAbuseDisclosurePaper\\_20160217\\_v.1.pdf](https://www.d2l.org/wp-content/uploads/2016/10/ChildSexualAbuseDisclosurePaper_20160217_v.1.pdf) (gathering studies showing approximately 28%-33% disclosure during childhood).

<sup>2</sup> Or they wait until asked specifically in a study. *Disclosing Sex Abuse Is Critical*, [https://www.sciencedaily.com/releases/2010/01/100119121422.htm?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+sciencedaily+\(ScienceDaily%3A+Latest+Science+News\)](https://www.sciencedaily.com/releases/2010/01/100119121422.htm?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+sciencedaily+(ScienceDaily%3A+Latest+Science+News)) (25% never disclose); *Child Sexual Abuse Disclosure: What Practitioners Need to Know*, Darkness to Light, [https://www.d2l.org/wp-content/uploads/2016/10/ChildSexualAbuseDisclosurePaper\\_20160217\\_v.1.pdf](https://www.d2l.org/wp-content/uploads/2016/10/ChildSexualAbuseDisclosurePaper_20160217_v.1.pdf) (gathering studies showing approximately 26-28% do not disclose until specifically asked in adulthood).

children and to deter trafficking, it can only do so if the victims of sex abuse can go to court where it is safe to name their abusers and the powerful institutions that endanger them. The hyper-protective standard for institutions now in the window language would mean that once again Georgia would have a window that has little effect. Instead, institutions should be held accountable when they are negligent or reckless in protecting children from sexual abuse, assault, and trafficking. Why would Georgia permit the negligent and reckless entities a free ride when the issue is child sex assault? With the removal of the phrase “intentionally or with conscious indifference concealed evidence of such conduct,” Georgia could enact an ordinary window.

It should be noted that the one-year window is also a modest attempt to create justice for the many victims in Georgia whose claims expired under unfairly short SOLs. Other states have enacted longer window legislation, e.g., Delaware (2 years); Minnesota (3 years); and Hawaii (4 plus pending bill to add 4 more years).

Some have attempted to argue that the retroactive revival of expired SOLs is unconstitutional, but it is not under Georgia case law. *Lawson v. Boy Scouts of America*, No. 1615042, Cobb County Superior Court, *Vaughn v. Vulcan Materials Co.*, 465 S.E.2d 661, 662 (Ga. 1996) (“There is no vested right in a statute of limitations and a legislature may revive a claim which would have been barred by a previous limitations period by enacting a new statute of limitations, without violating our constitutional prohibition against retroactive laws.”). This reasoning has been followed in a majority of states. See, e.g., *Roe v. Ram*, No. CV 14-00397 HG-RLP, 2014 WL 10474393 (D. Haw. Nov. 26, 2014); *Melanie H. v. Defendant Doe*, No. 04-1596-WQH-(WMC), slip op. (S.D. Cal. Dec. 20, 2005); *Sliney v. Previte*, 473 Mass 283, 41 N.E.3d 732 (Mass. 2015); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 419–420 (2015); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247 (Del. 2011).

There is a simple choice now before the Georgia legislature: protect predators or kids. Georgia’s children deserve the passage of effective statute of limitations reform to identify current and past child predators, and to achieve justice for the many victims suffering now in silence. Passage of the Hidden Predator Act of 2018 with the removal of the phrase “intentionally or with conscious indifference concealed evidence of such conduct” would go far to right the wrongs committed under cover of Georgia’s previous, backward statutes of limitations.

Please do not hesitate to contact me if you have questions regarding statute of limitations reform, or if I can be of assistance in any other way.

Sincerely,



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