



TESTIMONY IN SUPPORT OF NEW JERSEY S. 477:

TO: Hon. Nicholas P. Scutari, Chair
and members of the Judiciary Committee

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

RE: S. 477, expansion of the civil statute of limitations for child sex abuse and
adult sex assault

DATE: March 4, 2019

I commend you and the Committee for taking up S. 477, which would extend the statute of limitations (“SOLs”) for civil actions brought by minor victims of sexual offenses from age 20 to age 55, extend the delayed discovery rule from two years to seven years, and create a two year window, that would revive expired civil statutes of limitations for the sexual abuse of children. If passed, New Jersey will be on its way to becoming a leader in child protection.

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 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. The movement to eliminate, extend, and revive child sex abuse SOLs is part of the civil rights movement for children. Access to justice is a critically important aspect of every person’s civil rights.

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. Unfairly shorts SOLs have prevented victims from naming their perpetrators publicly for fear of retaliation and blocked justice. It also forced victims to absorb the cost of the abuse while lifting the burden off the ones who caused it

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 New Jersey 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 New Jersey who are preying on one child after another because the existing short civil SOLs provide that opportunity for predators. S. 477 will extend the civil SOL for cases of child sex abuse to the later of age 55 or seven (7) years from discovery of the harm caused by the abuse. It will also create a revival window so child victims from the past are not shut out of justice. As a result, it will greatly reduce the present danger to New Jersey'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 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 children 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.

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. Absent complete prospective elimination of the civil statutes of limitation, a generous delayed discovery rule is the best way to ensure that justice will be made available to as many victims as possible.¹ 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. N. Spröber et al., *Child sexual abuse in religiously affiliated and secular institutions*, BMC Public Health, Vol. 14, at p. 282 (March 27, 2014).² Yet, until recently, many

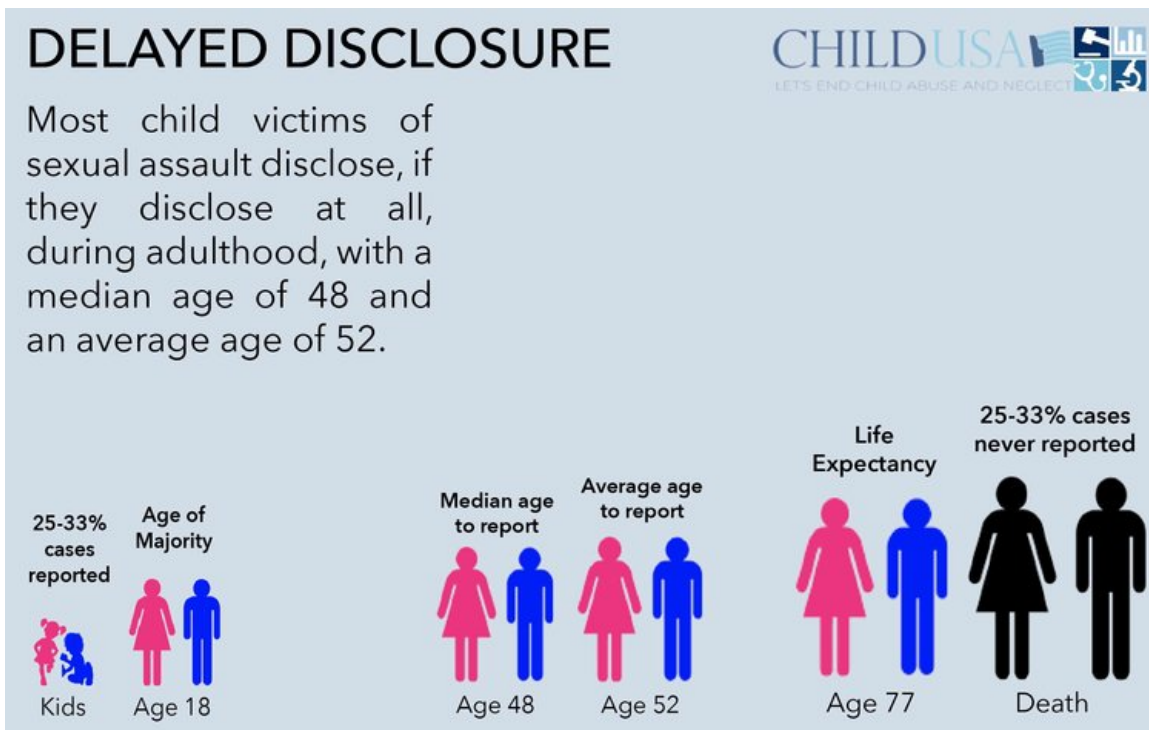
¹ The SOL movement for child sex abuse victims has spawned a corresponding movement for adult victims which is recognized in this bill. By extending the discovery rule from two years to seven years from victimization or seven years from discovery, whichever is later, adult victims of sex assault would be afforded greater access to justice in New Jersey than ever before.

² <https://www.clinicalkey.com/#!/content/medline/2-s2.0-24669770>

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.

Currently, New Jersey law caps the civil SOL at age 20 (the age of majority, 18, plus 2 years), with a two-year discovery rule that allows victims to file a claim within two years of discovering an injury caused by their abuse.

As the following graphic demonstrates, the average age for disclosure of child sex abuse is age 52 and the median age is 48. 20 is well below the average and median ages of disclosure for victims of child sex abuse, meaning that a majority of New Jersey's victims have been denied justice. By the time most victims are ready to come forward, the courthouse doors have been locked. Not only will S. 477 extend the civil SOL to age 55, it will also expand the discovery rule allowing child and adult victims up to 7 years from discovery of sexual abuse or assault, making justice accessible to many more residents.



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. Dozens of states have considered and passed significant SOL reform since 2002. For an analysis from 2002 through 2018, see CHILD USA's 2018 SOL Report at <https://www.childusa.org/sol-report-july-2018>. In the first two months of 2019 alone, 32 states are already considering SOL reform, which is a dramatic uptick from previous years.³

³ For the latest updates on the current landscape of SOL reform, visit www.childusa.org/2019sol and www.childusa.org/law.

Ten states have enacted SOL revival legislation—this legislation revives the expired civil SOL for a set period of time.⁴ These revival windows help to identify many previously unidentified perpetrators, making the state safer. For example, in California, during 2003 when the civil SOL was revived, 300 predators were identified to the public that had not been identified before. S. 477 would create a two-year lookback window, reviving expired SOLs for victims who were previously unable to file a claim against a perpetrator due to this arbitrary procedural deadline.

This Bill would also expand the categories of defendants who are liable in these cases, enabling claims to proceed against a responsible institution. This expansion includes liability for nonprofit corporations, societies or associations organized exclusively for religious, charitable or educational purposes including its trustees, directors, officers, employees, agents, servants or volunteers. This institutional liability is essential to the quest for justice by victims, and I commend New Jersey for recognizing the central importance of holding both institutions and perpetrators accountable for their role in covering up childhood sexual abuse.

I also commend New Jersey for recognizing the harm that class actions would bring in these cases. Class actions are designed for circumstances where the victims have identical or nearly identical harm, or where such small monetary amounts are at stake that individual suits are implausible. For example, they are effective and efficient when dealing with litigation over a medication or medical device, or where a \$1 charge is improperly added to thousands of standardized consumer invoices. They permit aggregation of claims that are essentially redundant of each other. Notably, however, **class action lawsuits are inconsistent with child sex abuse victim empowerment and healing.**

The revival windows are intended to create opportunities for victims to obtain individual justice tailored to their particular experiences and damages. Because trauma operated through each victim differently, this “one-size-fits-all” approach is antithetical to justice and true healing. Class actions in cases of sex abuse is the perfect example of at-fault institutional actors rushing to clear as many cases as possible before the fact-finding process of litigation pushes information into the public square and before the survivors can fully understand how the institution harmed them.

We have been working for access to justice for victims of child sex abuse in New Jersey for over a decade. On June 21, 2012, I testified in this very State House, explaining “Given that most child perpetrators abuse many children over the course of their lives, statute of

⁴ California, 1-year window (2003); Connecticut, revival to age 48 (2010); Delaware, 2-year revival window, followed by an additional window for healthcare providers who were not covered by the initial window (2007-09); Georgia, 2-year window against the perpetrator only (2015-17); Hawaii, 2-year window (2018); Massachusetts, revival up to age 53 against perpetrator and revival with 7-year delayed discovery rule against institutions (2014); Michigan, 90-day window for victims of Larry Nassar (2018); Minnesota, 3-year window (2013-16); Utah, retroactive revival window against perpetrator to age 53 or 3 years after enactment, whichever is later (2016); New York, one-year revival window against perpetrators and responsible institutions beginning 6 months after enactment (signed on Feb. 14, 2019); *see also* Washington D.C., 5-year window to age forty with five-year delayed discovery rule (2019; *Mayor approved, but must be passed by Congress).

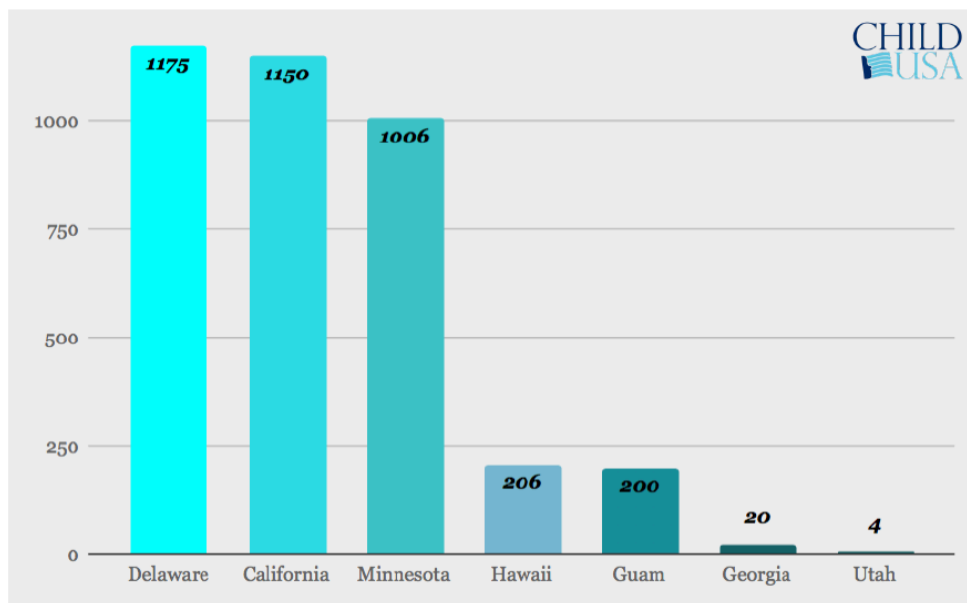
limitation reform does far more than create justice for victims in the past. It also forestalls future abuse of today's children because it is never too late to identify a perpetrator or to give victims their day in court." In the intervening years, victims from New Jersey have still been denied access to justice.

In neighboring Pennsylvania, the 2018 Grand Jury Report exposing large-scale child sex abuse in six Catholic dioceses underscored both the pervasiveness of sex abuse in the region as well as the drastic need for immediate reform. The Report confirmed that locally, there is a large problem with child sex abuse and related coverups. Many Pennsylvania predator priests took victims from neighboring Pennsylvania into New Jersey. The passage of S. 477 would provide an opportunity for justice to every victim sexually abused in this state.

This is a banner year for SOL reform. In addition to the 32 pending bills, New York led the way for access to justice for victims in 2019, having passed the Child Victims Act, which created a revival window and extended the civil SOL. California is positively considering a three-year revival window for victims of child sex abuse in the state.

Opponents to child sex abuse SOL reform often argue that it leads to many false claims and an avalanche of lawsuits. This is patently untrue. There have been no false claims in the courts where window legislation has passed and the number of cases has been modest. Each window has fulfilled the goals of SOL reform, identifying hidden predators, shifting the cost of abuse away from the victims, and educating the public.

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



Once again, I commend you for introducing this legislation which is desperately needed to help victims of childhood sexual abuse, and the Committee for taking up the cause of child sex abuse victims. New Jersey's children deserve SOL reform to protect children today and into the future. Extending the civil SOL to age 55 and opening a two-year

revival window for victims of child sex abuse is a large step forward for New Jersey'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,



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