

CHILD USA

THE THINK TANK FOR CHILD PROTECTION

TO: Sen. Richard Sears, Senate Judiciary Committee (rsears@leg.state.vt.us);
CC Peggy Delaney (pdelaney@leg.state.vt.us)

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

RE: H. 330, Court procedure; statutes of limitations; civil actions based on childhood
sexual abuse

DATE: April 23, 2019

I commend you and the Committee for taking up H. 330, which would eliminate the statute of limitations for civil actions brought by minor victims of sexual offenses. If passed, this legislation will make Vermont 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 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.

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 Vermont 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 Vermont who are preying on one child after another because the existing SOLs provide that opportunity. Current Vermont law provides that a claim for injury suffered as a result of childhood sexual abuse be commenced within the later of six years of the act of abuse or six years of the time the victim

discovered that their injury or condition was caused by that act. H. 330 would eliminate the civil SOL, allowing all victims of childhood sexual abuse to come forward when they are ready. By eliminating the SOL both prospectively and retroactively, access to justice for past and future victims will be available; this will also greatly reduce the present danger to Vermont'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 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.

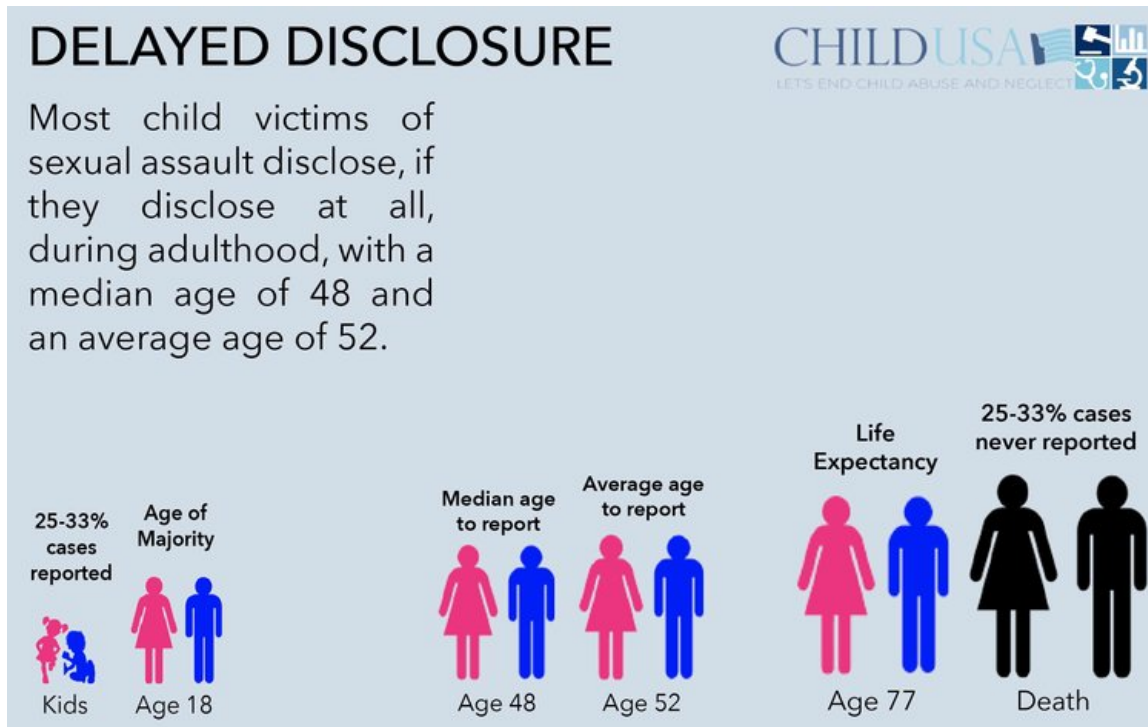
Historically a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states have shut down most cases. That is 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. Elimination of the civil statutes of limitation for victims of child sex abuse is the best way to ensure that justice will be made available to as many victims as possible. 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. 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. Eliminating the statutes of limitations for child sexual abuse, which is a growing national trend, makes justice accessible to many more residents.

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. Dozens of states have considered and passed significant SOL reform. 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 quarter of 2019 alone, 38 jurisdictions are already considering SOL reform.¹

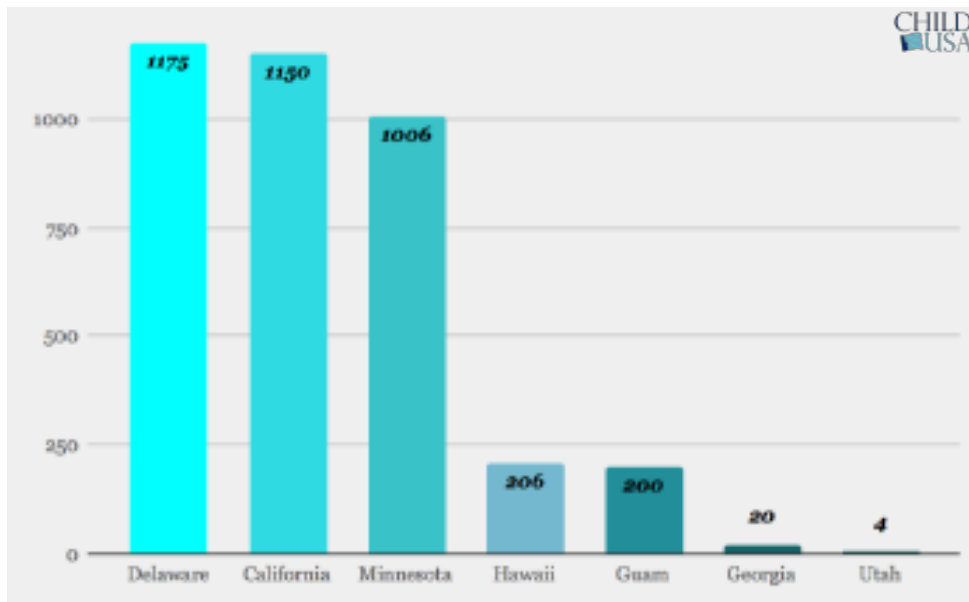
At this point, 42 jurisdictions, including Vermont and the federal government, have eliminated the criminal SOLs for at least the most serious child sex abuse crimes.

Ten states have enacted SOL revival legislation—this legislation revives the expired SOL for a set period of time.² The states that have revived expired civil SOLs have learned about hidden

¹ For the latest updates on the current landscape of SOL reform, visit www.childusa.org/2019sol and www.childusa.org/law.

² 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

child predators while empowering victims. As the below graph shows, these complete eliminations or revival windows do not yield a high number of cases, but provide long-overdue justice to those who bring claims.³



Eliminating the SOLs dramatically increases access to justice for victims. In 2016, Guam successfully enacted legislation similar to what is proposed in H. 330. Elimination and revival of expired claims help to identify many previously unidentified perpetrators, making states safer. In California, during 2003 when the civil SOL was revived, 300 predators were identified to the public that had not been identified before. Further, of a population of nearly 40-million, only approximately 1,150 survivors (.002%) filed claims. H. 330's complete elimination of the SOL, both retroactively and prospectively would provide access to justice to victims who were previously unable to file a claim against a perpetrator due to a procedural deadline.

Guam, which opened the courthouse doors to victims of childhood sexual abuse in 2016 through complete elimination of the civil SOL has become a leader for protecting child victims. Guam, which has a population of roughly 165,000, not seen a large number of cases filed since it eliminated its SOLs for child sex abuse both retroactively and prospectively.⁴ In fact, since 2016, approximately 200 survivors have filed claims, totaling significantly less than one percent of the total population (0.12%). No false claims have been reported. Vermont's population is roughly 626,000, according to the latest census data. Based on the best available data and national trends, these cases will not clog the courts, and will provide justice to Vermont's victims.

(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).

³ For more information about the relative success of civil SOL windows and revival statutes, visit https://static1.squarespace.com/static/5a120b962aeba581dd692cd4/t/5c75a25641920255731638bd/1551213143803/Relative+Success+of+Civil+SOL+Window+and+Revival+Statutes_Jan+2019.pdf

⁴ *See, e.g.*, <https://population.un.org/wpp/Download/Standard/Population/>;
<http://worldpopulationreview.com/countries/guam-population/>.

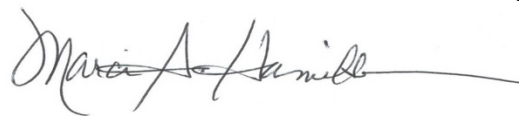
This Bill would also enable such claims to proceed against a responsible entity. This institutional liability is essential to the quest for justice for victims, and I commend Vermont for recognizing the central importance of holding institutions accountable for their role in covering up childhood sexual abuse.

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. Residents of Vermont have been denied justice for far too long—these changes will help protect Vermont’s children.

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. Vermont’s children deserve SOL reform to protect children today and into the future. Eliminating the civil SOL is a positive step for Vermont’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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