



THE THINK TANK FOR CHILD PROTECTION

Memorandum of Support for S.2440/A.2683, the Child Victims Act

Submitted by

Prof. Marci A. Hamilton, Founder and CEO
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This memorandum by the nonprofit think tank, CHILD USA, is in support of the New York Child Victims Act, S.2440/A.2683. This bill will reveal hidden child predators to the public, shift the cost of abuse from the victims of child sex abuse to the ones who caused it, and give victims a path to justice. I congratulate Governor Andrew Cuomo, Senator Brad Hoylman, former Assemblywoman Marge Markey, Assemblywoman Linda Rosenthal, Assembly Speaker Carl Heastie, and Senate Majority Leader Andrea Stewart Cousins for their leadership.

An arbitrary and technical legal rule has kept survivors from justice-- "statutes of limitation," or SOLs. SOLs are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. Perpetrators and the institutions that protect them benefit from short SOLs and until recently, most states and countries shut down most cases. With the Child Victims Act, or CVA, New York is taking great strides to protect victims of child sex abuse.

Historically, a wall of secrecy has been constructed around child sex abuse, and only now, in the twenty-first century has the wall been broken down to reveal a horrifying sight: millions of adults who were sexually abused as children have been living in the darkness of shame, intimidation, and humiliation, with no path to justice available. There are many in New York.

As a result of all of this information coming to light, there is a national and global movement for SOL reform. Dozens of states have considered and passed significant SOL reform. In 2018 alone, 15 states, including New York, considered bills. It is motivating for other states to see New York reignite the charge so early in the new year. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil SOLs.

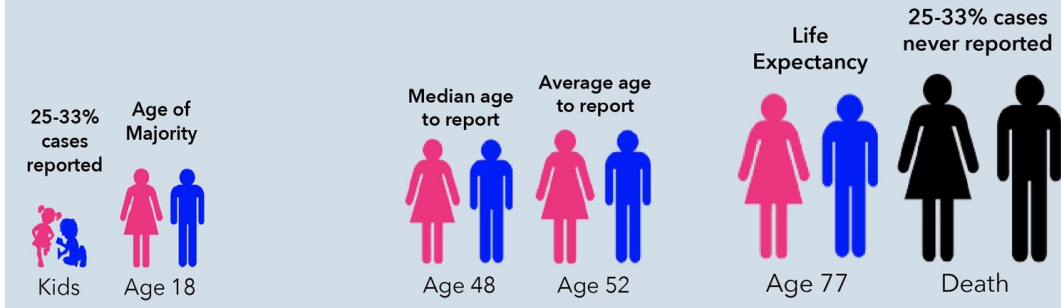
It is a medical fact that victims of child sex abuse often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse. We now know that the average age of disclosure for adult victims of child sex abuse is 52. It is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.



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.



The CVA will extend the civil statute of limitations from age 23 to age 55 for future cases. With the average age of disclosure at 52 for victims, this extension creates a path to justice for many New Yorkers, who would have otherwise been shut out. This is a great step forward, although it is a moderate step. Nine states have gone farther and eliminated the civil statute of limitations for child sex abuse prospectively, for future cases.¹

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 “window” or lookback legislation reviving expired civil SOLs is the only prospect for justice.

At this point, thirty-nine states have eliminated the criminal SOLs for at least the most serious child sex abuse crimes, including New York. The Child Victims Act will modestly lengthen other child sex abuse crime SOLs by extending the criminal SOL for all other crimes from age 23 to 28.

The Child Victims Act will also level the playing field by treating public and private institutions identically as it removes the 90-day notice of claim requirement currently in place under New York law for claims against the government, including public schools.

The one-year revival window will permit victims of child sex abuse, whose statutes of limitation have expired to file civil lawsuits against perpetrators and responsible

¹ AK, CT, DE, FL, IL, ME, MN, NE, UT

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); District of Columbia, 2-year window (2019); Georgia, 2-year window against the perpetrator only (2015-17); Hawaii, 2-year window (2018); Massachusetts, revival to age 53 against perpetrator, civil SOL against institutions revived + 7 years with discovery (2014); Michigan, 90-day window for victims of Larry Nassar (2018); Utah, retroactive revival to age 50, 2 year window against

institutions for a one-year period, starting six months from enactment. It will extend the criminal SOL 23 to age 28 for most sex abuse crimes (in addition to those previously eliminated in 2006), extend the civil SOL from age 23 to age 55, and remove the 90-day notice of claim provision for actions against the government.

Ten jurisdictions have enacted SOL Revival Legislation—this legislation revives the expired SOL for a set period of time.² New York’s window legislation in the Child Victims Act is on the modest side, as it will only last for one year, which is the same as California’s window—open during 2003. Delaware enacted a 2-year window; Minnesota enacted a 3-year window; and Hawaii will have had 6 years of window opportunity for its victims.

The universal experience in these states is that window legislation identifies hidden child predators; it provides an outlet for justice for some survivors, but produces at most a modest number of claims. This is the clearest path to justice for the victims from the past, and to greater education of the public about the realities of risk to their children from child predators and organizations that enable child abusers. New Yorkers will learn about more clergy, coaches, teachers, family member, and other abusers; these facts will be painful no doubt but also necessary for the adequate protection of children. New York will also see savings as the cost of sex abuse will be shifted from the victims (and the state support many need) to the ones who caused the abuse.

On behalf of CHILD USA, I commend New York for taking up this charge on behalf of child victims and those suffering in silence. The Child Victims Act will make New York a leader in child protection.

Sincerely,



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