

# CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

Marci A. Hamilton  
Paul R. Verkuil Chair in Public Law

PHONE: 215-353-8984  
FAX: 215-493-1094  
E-MAIL: hamilton.marci@gmail.com

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Hon. Dennis O'Brien  
Chair  
Committee on Children and Youth  
312 Main Capitol  
P.O. Box 202169  
Harrisburg, PA 17120-2169

Hon. Louise Bishop  
Minority Chair  
326 Main Capitol Building  
P.O. Box 202192  
Harrisburg, PA 17120-2192

Dear Representatives O'Brien and Bishop:

Thank you for holding this informational hearing today regarding legal reform to protect children in the wake of the Pennsylvania State University child sex abuse scandal. I am a proud alumnus of Penn State and applaud your efforts to lead Pennsylvania and all states in the protection of children. I am here today to urge you to pass House Bills 878 and 832.

**The most serious threat to children in Pennsylvania and most states today is that child predators are benefitting from the legal system. Statutes of limitations usually expire before victims come forward, leaving the victims mute. That silence is the child predator's best friend. We need to alter the balance so that children are protected and predators are disabled.**

By way of introduction, I am a Pennsylvania resident since 1984, and one of the leading church/state scholars in the United States. For the past twenty years, I have been a full-time faculty member at Benjamin N. Cardozo School of Law, Yeshiva University, New York, NY, where I currently hold the title of Paul R. Verkuil Chair in Public Law. My book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008), and website, [www.sol-reform.com](http://www.sol-reform.com) are leading resources in the field of legislation to protect child sex abuse victims. Prior to teaching, I received two Masters' degrees from Pennsylvania State University (English, 1984; Philosophy, 1982), and a law degree from the University of Pennsylvania (1988), where I served as Editor-in-Chief of the Law Review. I then clerked for Judge Edward R. Becker, at the United States Court of Appeals for the Third Circuit, and Justice Sandra Day O'Connor, at the United States Supreme Court.

Penn State football coach Jerry Sandusky is accused now of abusing 9 children through his connections to the Second Mile nonprofit and Penn State. At this point, the oldest survivor to come forward is 29. Under existing Pennsylvania law, any victim who is now over 30 years-old, likely would be shut out of both prosecution and a civil action. That means victims who were abused in the 1970s, 1980s, and even the 1990s have no legal recourse for what was done to them. That is irrational and unfair.

**Statute of limitations reform, and specifically, window legislation, is the one tried and true means that will identify the most hidden child predators, who are grooming their next child victims right now in Pennsylvania. House Bills 878 and 832 would protect the children of Pennsylvania by making it possible for victims to come forward and identify their perpetrators in a court of law.** It would also bring delayed, but still needed, justice to these victims. This is a sunshine law for children.

- There is an epidemic of child sex abuse in the United States and around the world. About one in four girls and one in five to six boys will be sexually abused during their youth. This is an average of 20-25%!
- Sadly, almost 90% never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court.
- Most victims are abused by family or family acquaintances and virtually all need decades before they are ready to come forward.
- Child sex abuse victims have a disproportionate tendency to be alcoholics, drug addicts, and to achieve well below their potential.

**The child is not the only one who pays for child sex abuse; we all do.** Survivors, their friends and families suffer. Pennsylvania pays the price of abuse in several ways:

- **First, the state suffers from reduced productivity from victims, because they have often been disabled by the abuse.** To the extent that they are not made whole, they are producing less tax-generating income.
- **Second, Pennsylvania bears the cost of divorces, broken homes, and suffering children, which are a sadly prevalent fact in many survivors' lives.** This creates a drag on local school districts that must provide counseling and guidance for troubled youth, the state agencies that deal with troubled families, and local authorities.
- **Third, the survivors' medical bills generated by the abuse, whether it is psychological or physical treatment, are likely to have to be subsidized by state and federal medical programs and funds.**

The fact that Pennsylvania shuts off most prosecution and civil claims before victims are ready to come forward means that most victims have no chance to achieve justice and, therefore, are more likely to suffer serious depression and illness.

If Pennsylvanians want to know who the perpetrators are in this state, these bills are the answer. I encourage the Pennsylvania Legislature to fulfill its duty to the children of Pennsylvania and pass both House Bills 878 and 832.

As to the substance of the two statute of limitations reform bills at issue:

**House Bill 832:**

- Eliminates the statute of limitations for a number of enumerated criminal offenses involving child sexual abuse;
- Eliminates the statute of limitations in civil cases where the sexual abuse was the *result of compulsion or threats* made by the adult defendant to the child victim.

**House Bill 878:**

- Extends the statute of limitations in all civil cases not encompassed by **House Bill 832** by allowing claims to be brought in court up to 32 years after the victim turns 18;
- Establishes a most important **civil “window”** which allows any suit that was previously barred from court solely on statute of limitations grounds to commence within the two year period of the “*window*.” (A suit previously brought and dismissed as being untimely could be revived upon petition and showing of newly discovered evidence, excusable neglect or other “extraordinary circumstances”).

**House Bills 878 and 832 are not only constitutionally sound, but also will contribute to a legal environment much more protective of children than the status quo.** There are three compelling public purposes served by window legislation:

- *(1) the identification of previously unknown child predators to the public so children will not be abused in the future;*
- *(2) giving child sex abuse survivors a day in court; and*
- *(3) leveling the playing field between individual and institutional entities that cause abuse and the victims.*
- Without the window, the perpetrators win at the expense of their victims and at the expense of every child. **Under this reasoning, any policy concerns are balanced in favor of opening court access to victims of child sex abuse.**
- **Victims of child sex abuse rarely make false claims, as we learned in California and Delaware, which have already passed window legislation.**

**The balance of equities weighs in favor of creating a window for survivors of child sex abuse:**

- **First, there is an extensive and persuasive body of scientific evidence establishing that child sex abuse victims are harmed in a way that makes it extremely difficult to**

**come forward and, therefore, victims typically need decades to do so.** Importantly, civil tort claims are often the only way victims may obtain justice.

- **Second, the success of the California and Delaware window legislation in protecting children from child predators was remarkable.**
- **Third, as perpetrators typically have multiple victims and do not stop abusing children as they get older, public identification of even aged perpetrators is a public safety interest of the first order.**
- **Fourth, there is a burgeoning awareness that institutions have followed procedures to cover up abuse and abusers' identities, making legal reform necessary.** It is reasonable to believe that other organizations beyond Penn State also have suppressed or failed to report child abusers, and window legislation is the most effective way to bring perpetrators into the light and prevent future abuse. Accordingly, the California and Delaware window cases have included victims from a variety of arenas, including the home, the Explorer Scouts, the Boy Scouts, public schools, private schools, and religious denominations.

**It is time to act to protect Pennsylvania's children by enacting as soon as possible HB 832 and 878.** Thank you for asking me to testify today. I welcome your questions and a continued conversation on protecting Pennsylvania's children.

Sincerely,



Marci A. Hamilton  
Paul R. Verkuil Chair in Public Law  
Benjamin N. Cardozo School of Law