

February 24, 2020

The Honorable Jon Hansen, Chair
And Honorable Members of the House Judiciary Committee
The South Dakota Legislature
500 East Capitol Avenue
Pierre, SD 57501

RE: HB 1196, an act to authorize the revival of certain civil claims

Dear Chairman Hansen,

My name is Professor Marci Hamilton. Thank you for allowing me to submit testimony regarding HB 1196. I commend you and the Committee for taking up HB 1196, which would create a two-year window to revive expired civil child sex abuse claims and would eliminate the age 40 upper limit on the discovery rule. If passed, this legislation will bring South Dakota into the national trend of fighting to protect children's rights and change its position as the *only* state in the United States to narrow the civil statute of limitations for child sex abuse since 2002.

By way of introduction, I am the Founder, CEO, and Academic Director of CHILD USA, a national, 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 (SOL) 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 national 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.

I. Window Legislation Serves the Public Good by Restoring Justice to Victims and Preventing Future Abuse

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. Most claims expire before the victims are capable of getting to court. This bill would protect the children of South Dakota 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 incredibly 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 South Dakota who are preying on one child after another because the existing SOLs provide that opportunity. 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 South Dakota's children.

There are three compelling public purposes served by window legislation:

- 1) A window *identifies hidden 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 society 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.

Opponents of SOL revival voice concern about the potential for false claims, but the concern is a red herring. Victims of child sex abuse almost never make false claims, as we learned in Guam, California, and Delaware, where windows already opened and closed. In Guam, approximately 200 survivors have filed claims since 2016, when it enacted a revival window. No false claims have been reported. In California, there were unconfirmed reports of approximately five false claims out of 1,150 filed, which means false claims in the area of child sex abuse are statistically insignificant. While there were few false claims in California, the window resulted in the identification of 300 child predators previously unidentified to the public, as mentioned above.

Opponents of reform try to claim that without a statute of limitations, institutions and pedophiles will not be able to defend themselves in court against decades-old claims, also raising due process fairness concerns. This is another red herring. SOL reform merely removes the arbitrary deadline for filing a claim. The plaintiff still bears the initial burden of proof, and if the plaintiff does not have corroborating evidence, the case is over. The defendant need not defend cases

where the plaintiff lacks evidence, and simply need file a motion to dismiss on SOL grounds. They fear that cases will now move to the merits rather than remain unheard due to this arbitrary deadline.

Sixteen states and Washington D.C. enacted revival laws - which revive expired civil claims that had been blocked by unfairly short SOLs.¹ The states that have revived expired civil SOLs have learned about hidden child predators while empowering victims. These revival laws do not yield a high number of cases,² but provide long-overdue justice to older victims of child sex abuse.

II. Extending the Discovery Rule Reflects the Proven Reality of Delayed Disclosure

South Dakota currently has one of the most restrictive discovery rules for child sex abuse in the United States, because it has an age cap. 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. Extending the civil SOLs for child sex abuse ensures that justice will be made available to more victims. Short SOLs for child sex abuse play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment.

As the following graphic demonstrate, based on the best science, age 52 is the average age of disclosure for victims of child sex abuse.³ 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.

¹ For more information on SOL revival, visit *Statute of Limitation (SOL) Reform by Jurisdiction: Who Has Done the Most for Victims of Child Sex Abuse?*, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/best-sols.

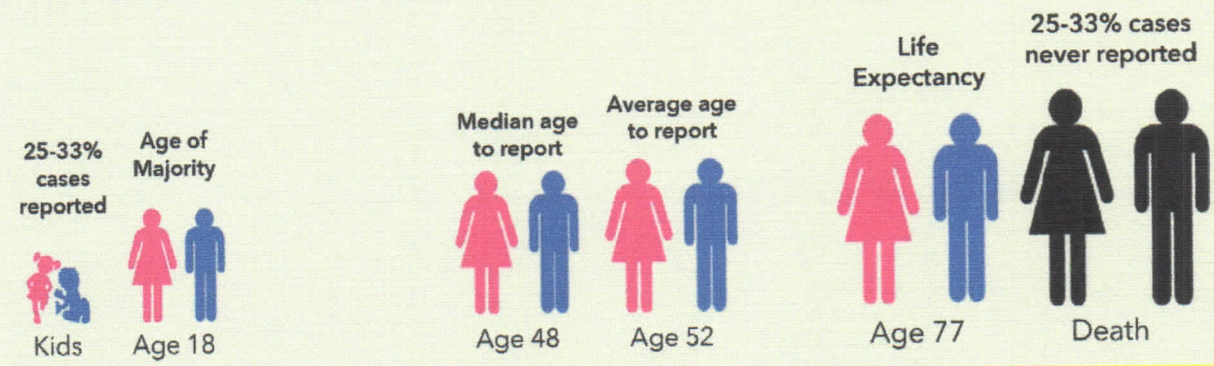
² See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Feb. 17, 2020), available at www.childusa.org/law.

³ Delayed discovery studies available at *Delayed Disclosure of Child Sex Abuse*, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/delayed-disclosure.

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.



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.

III. South Dakota Should Join the National Trend Toward Meaningful SOL Reform

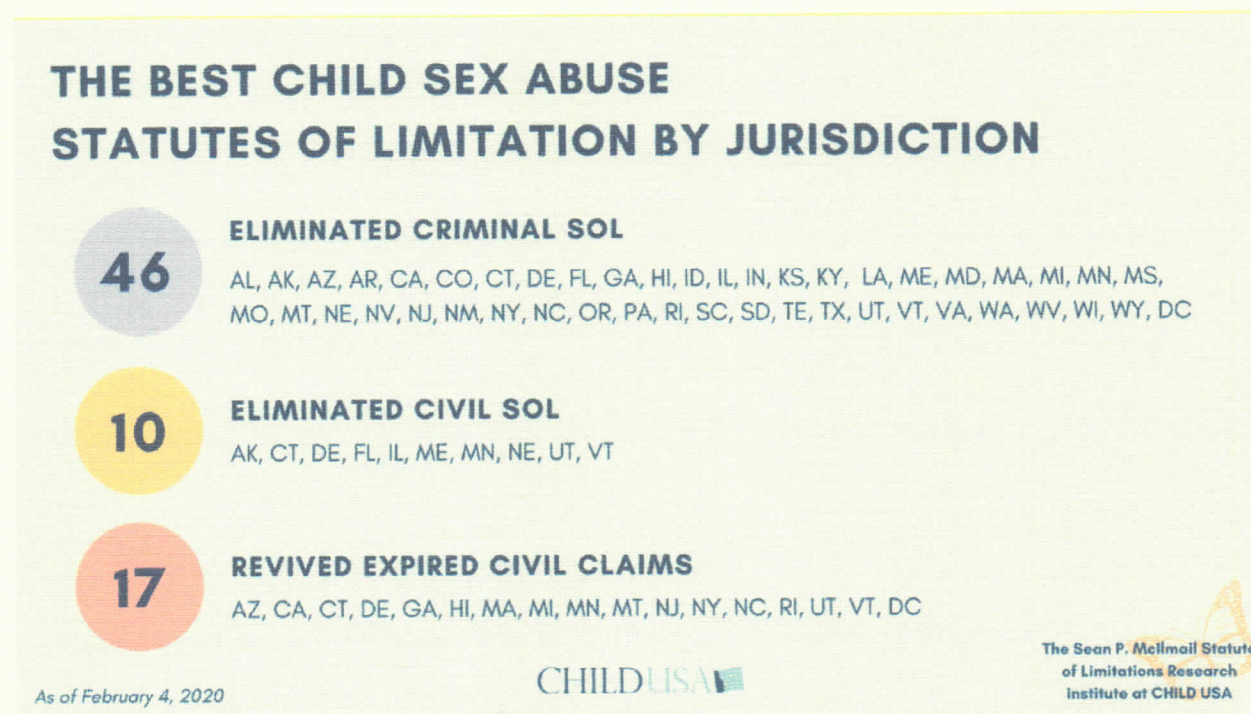
There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement from 2002 through 2019, see CHILD USA's 2019 SOL Report.⁴ 2019 was a banner year for SOL reform with 23 states and Washington D.C. improving their SOLs for child sex abuse.⁵ This year, South Dakota is one of 27 states that are already considering SOL reform.⁶

⁴ 2019 SOL Report, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/sol-report-2019.

⁵ For more information on SOL reform in 2019, visit *2019 Summary of Child Sexual Abuse Statutes of Limitations (SOLs): Introduced, Signed into Law and State Laws by Category*, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/2019sol.

⁶ For the latest updates on the current landscape of SOL reform in 2020, see *2020 SOL Summary*, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/2020sol; *Current Laws for Child Protection*, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/law.

At this point, 10 states have eliminated civil SOLs for child sex abuse.⁷ Another 14 states have extended civil SOLs past 50 years of age. The graphic below provides a national overview of SOL reform for child sex abuse and details the states that currently have the best criminal and civil SOL laws.



Vermont led the way for access to justice for child sex abuse victims in 2019, enacting a civil elimination and permanent revival window law. In 2020 so far, South Dakota stands with five other states seeking to extend their civil SOLs, while 15 states seek to eliminate their civil SOLs entirely.⁸

The following graphic provides a summary of the 27 states, including South Dakota, that have already introduced SOL reform legislation in 2020, with a breakdown of what type of reform each state is proposing.

⁷ AK, CT, DE, FL, IL, ME, MN, NE, UT, and VT. For more information on civil SOL elimination, visit *Statute of Limitation (SOL) Reform by Jurisdiction: Who Has Done the Most for Victims of Child Sex Abuse?*, CHILDUSA.ORG (last visited Feb. 17, 2020), available at www.childusa.org/best-sols.

⁸ See *2020 SOL Reform Activity*, CHILDUSA.ORG (last visited Feb. 21, 2020), available at www.childusa.org/2020sol.

2020

SOL REFORM

27 States Introduced SOL Reform for CSA



14 States Have Bills to Open Revival Window/Law
FL, IN, IA, KS, MD, NM, NY, OH, SC, SD, VA, WV, WI, WY

6 States Have Bills to Extend Civil SOL
HI, OH, SC, SD, WV, WY

15 States Have Bills to Eliminate Civil SOL
CO, FL, IN, IA, KS, KY, MD, MS, MO, NH, NJ, NM, OH, WV, WI

12 States Have Bills to Extend Criminal SOL
AZ, FL, GA, IN, NH, NJ, NM, OH, OK, VA, WV, WI

12 States Have Bills to Eliminate Criminal SOL
AK, AZ, FL, GA, HI, IA, KY, MS, NH, NM, OH, OK


 The Sean P. McInnis Institute of
Limitations Research Institute
at CHILDUSA

CHILDUSA

www.childusa.org


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. South Dakota's children deserve SOL reform to protect children today and into the future. Eliminating the age cap on the discovery rule and reviving expired claims is a positive step for South Dakota'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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