



October 28, 2020

The Honorable James B. Eldridge and Claire D. Cronin, Chair  
And Honorable Members of the Joint Committee on the Judiciary  
The Massachusetts Legislature  
24 Beacon Street  
Boston, MA 02133

RE: S.2815, an act eliminating the statute of limitation in civil child sexual abuse cases

Dear Chairmen Eldridge and Cronin,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USA Advocacy, to submit testimony regarding S.2815, which will increase access to justice for victims of childhood sexual abuse and enhance protection for children in Massachusetts. If passed, this legislation will make Massachusetts a leader in the fight to protect children's rights.

By way of introduction, I am Professor Marci Hamilton, 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 leads the national reform movement for child sex abuse SOLs and is the only organization tracking SOLs for child sex abuse in every state. CHILD USA provides an analytical overview of SOL reform for child sex abuse, as well as other cutting-edge issues related to child protection, at [www.childusa.org/law](http://www.childusa.org/law).

Kathryn Robb, a Massachusetts resident and survivor of childhood sexual abuse, is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA, who advocates for child protection and better laws, including statutes of limitations (SOLs), through legal, social science, and medical research.

We commend you and the Committee for taking up S.2815, which will eliminate the SOL for civil claims based on child sex abuse and open a permanent window during which all claims, previously time barred by the prior SOL, will be revived. This will allow all past, present, and future victims of child sex abuse to come forward and pursue civil justice when they are ready. This will also greatly reduce the present danger to children in Massachusetts by educating the public about child sex abuse and exposing previously unknown predators in your midst. There is



an epidemic of child sexual abuse. Changing the law surrounding the issue will push Massachusetts forward into a better future and in line with the national trend.

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 obtaining justice and naming their perpetrators publicly for fear of retaliation.

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

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 Massachusetts by making it possible for victims to come forward and identify their perpetrators in a court of law.

As well as providing already-existing victims of abuse a path to justice, SOL reform also protects society at large. By allowing past-expired claims to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. Given the ways in which abuse impacts children into their adult lives, preventing further abuse only serves to help society - by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children to grow into healthy adults. SOL reform also further educates the public about the costs of child sexual abuse. By shedding light on the problem, parents and others are better able to identify abusers and prevent further abuse. They are also able to better educate their children to be aware of the signs and create more social awareness as to what is and is not abusive behavior, thereby further protecting their children.

SOL reform, and window laws in particular, validate victims and shift the cost of abuse to the perpetrators and enabling institutions, placing them on notice that the state no longer stands with them - but with their victims.

## HOW WINDOWS HELP EVERYONE



### Identifies previously unknown predators

to the public, shielding other children from future abuse.



### Shifts the cost of abuse

from the victims to the perpetrators and the institutions that enabled them.



### Educates the public

about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.



[www.childusa.org](http://www.childusa.org)

**CHILD USA**  
THE THINK TANK FOR CHILD PROTECTION

The Sean P. McElmurry Statute  
of Limitations Research  
Institute of CHILD USA

There are untold numbers of hidden child predators in Massachusetts who are preying on one child after another because the existing SOLs provide that opportunity. By eliminating the SOL both going forwards and backwards, access to justice for past and future victims will be available; this will also greatly reduce the present danger to the children of Massachusetts.

**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.

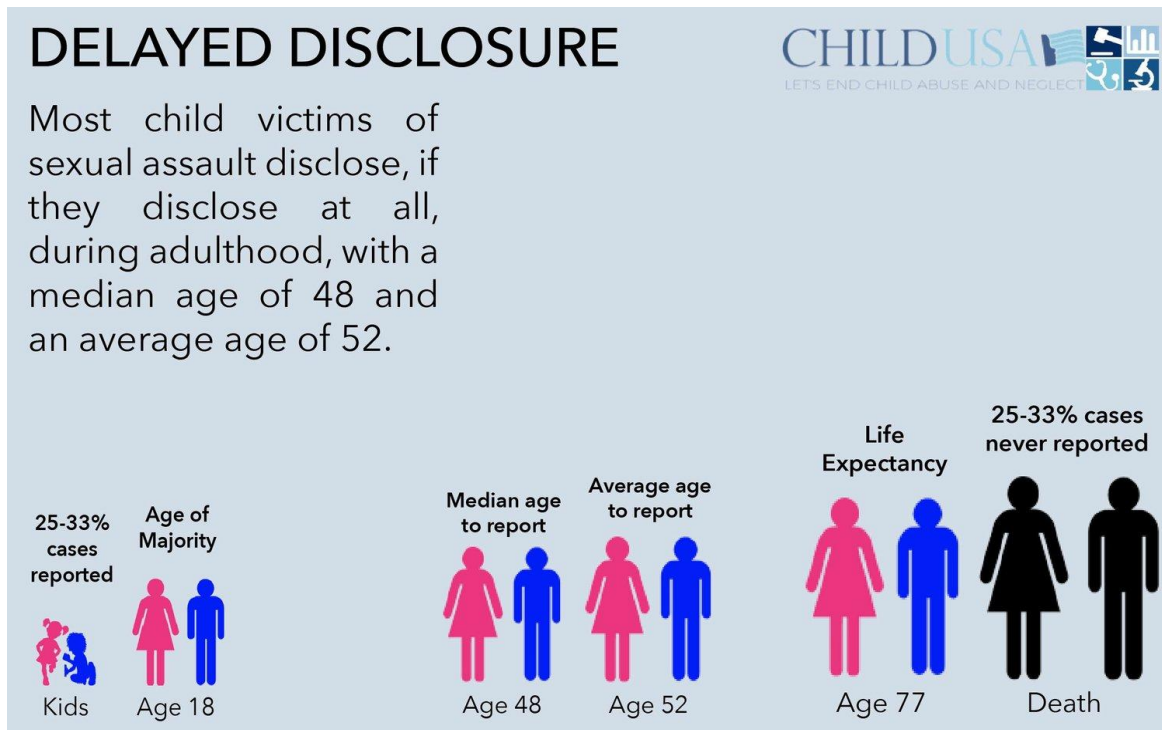
Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states have shut down most cases. That is a major reason we knew so little about the epidemic of child 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. Removing the civil SOLs for child sex abuse ensures that justice will be made available to all 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 demonstrates, based on the best science, **age 52 is the average age of disclosure for victims of child sex abuse.**<sup>1</sup> 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.



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.

## II. Massachusetts Should Join the National Trend Toward Meaningful SOL Reform by Eliminating its Civil SOL and Reviving Expired Child Sex Abuse Claims

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

<sup>1</sup> Delayed disclosure studies available at *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG (last visited Oct. 28, 2020), available at <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

reform movement from 2002 through 2019, see CHILD USA's 2019 SOL Report.<sup>2</sup> 2019 was a banner year for SOL reform with 23 states and Washington D.C. improving their SOLs for child sex abuse.<sup>3</sup>

This year, Massachusetts is one of 30 states that enacted or are still considering SOL reform. Like Massachusetts, there are 16 other states that were or still are seeking to eliminate their civil SOLs entirely and 18 other states that were or still are trying to revive civil claims for past abuse.<sup>4</sup>

The following graphic provides a summary of the 30 states, including Massachusetts, that have already introduced SOL reform legislation in 2020, with a breakdown of what type of reform each state proposed.



In 2020 already, and despite significant disruption by Covid-19, there are new improved SOL laws for child sex abuse in 8 states - including Florida, Indiana, Nebraska, New Hampshire, New York, Utah, Virginia and West Virginia. In particular, this year New Hampshire eliminated its civil SOL, West Virginia extended its, and New York and West Virginia revived expired civil claims.<sup>5</sup>

Vermont led the way for access to justice for child sex abuse victims in 2019, enacting a civil elimination and permanent revival window law, much like the bill you are considering. Vermont's law is the gold standard for SOL reform. While the Massachusetts legislature has

<sup>2</sup> 2019 SOL Report, CHILDUSA.ORG (last visited Oct. 28, 2020), available at [www.childusa.org/sol-report-2019](http://www.childusa.org/sol-report-2019).

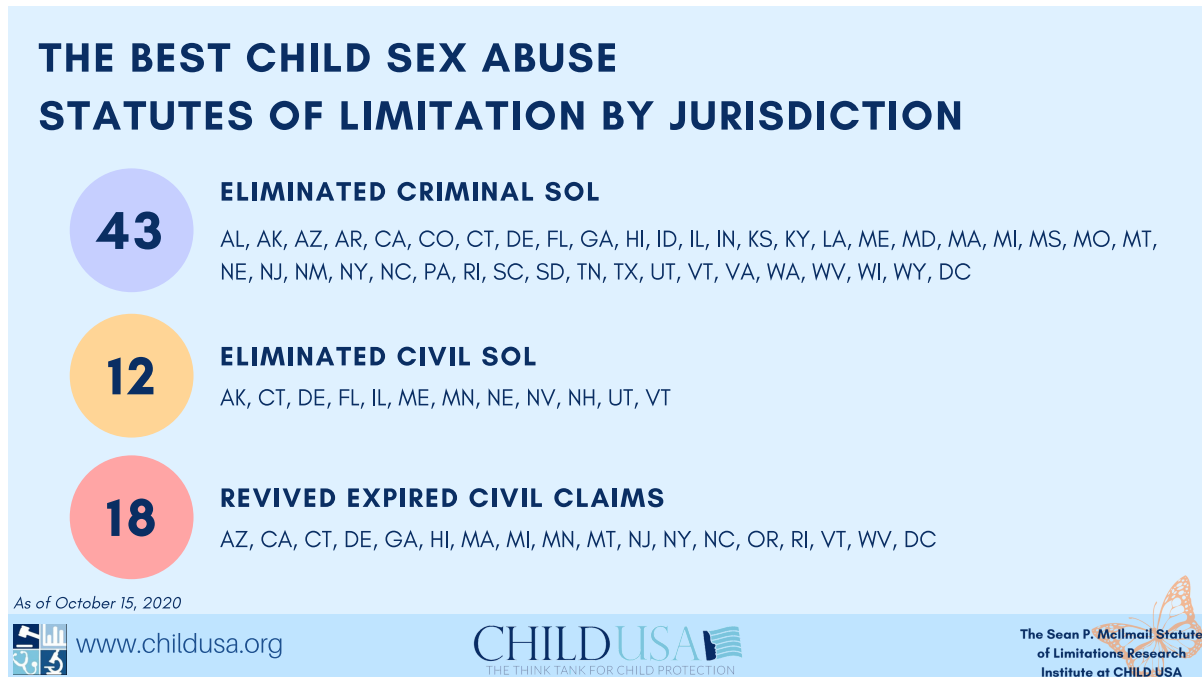
<sup>3</sup> For more information on SOL reform in 2019, visit *2019 Summary of Child Sexual Abuse Statutes of Limitations (SOLs): Introduced, Signed into Law and State Laws by Category*, CHILDUSA.ORG (last visited Oct. 28, 2020), available at [www.childusa.org/2019sol](http://www.childusa.org/2019sol).

<sup>4</sup> See *2020 SOL Summary*, CHILDUSA.ORG (last visited Oct. 28, 2020), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).

<sup>5</sup> See *id.*

made significant strides over the past decade towards improving SOLs, there is still more to be done. Massachusetts has been climbing and this bill is an opportunity for the state to reach the top - for the children of yesterday, today and tomorrow.

The graphic below provides a national overview of SOL reform for child sex abuse and details the states that currently in 2020 have the best criminal and civil SOL laws.



Since 2014, some survivors of abuse in Massachusetts have until they turn 53 years old or 7 years from discovery of their injuries to sue those responsible for their abuse. At this point, there are a total of 12 states that no longer have civil SOLs for child sex abuse, meaning a victim can file a lawsuit for their abuse whenever they are ready.<sup>6</sup> Elimination is a much better approach and affords all survivors, regardless of age, the time they need to muster the psychological strength to come forward.

The following graphic demonstrates how Massachusetts ranks amongst other states regarding its age cap for civil child sex abuse claims.

<sup>6</sup> AK, CT, DE, FL, IL, ME, MN, NE, NV, NH, 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 Oct. 28, 2020), available at [www.childusa.org/best-sols](http://www.childusa.org/best-sols).





There is literally only one way to restore justice to adult victims of child sex abuse and that is to revive their expired civil claims for abuse that were barred by unfairly short SOLs. In other words, to fix the wrongs done to them, they deserve the opportunity to file civil lawsuits if they so choose. Massachusetts is one of seventeen states and Washington D.C. to revive expired claims with a new retroactive age limit or a window. Massachusetts has already made some progress for adult survivors of child sex abuse by enacting a revival law in 2014, but this law was limited and did not help many survivors.

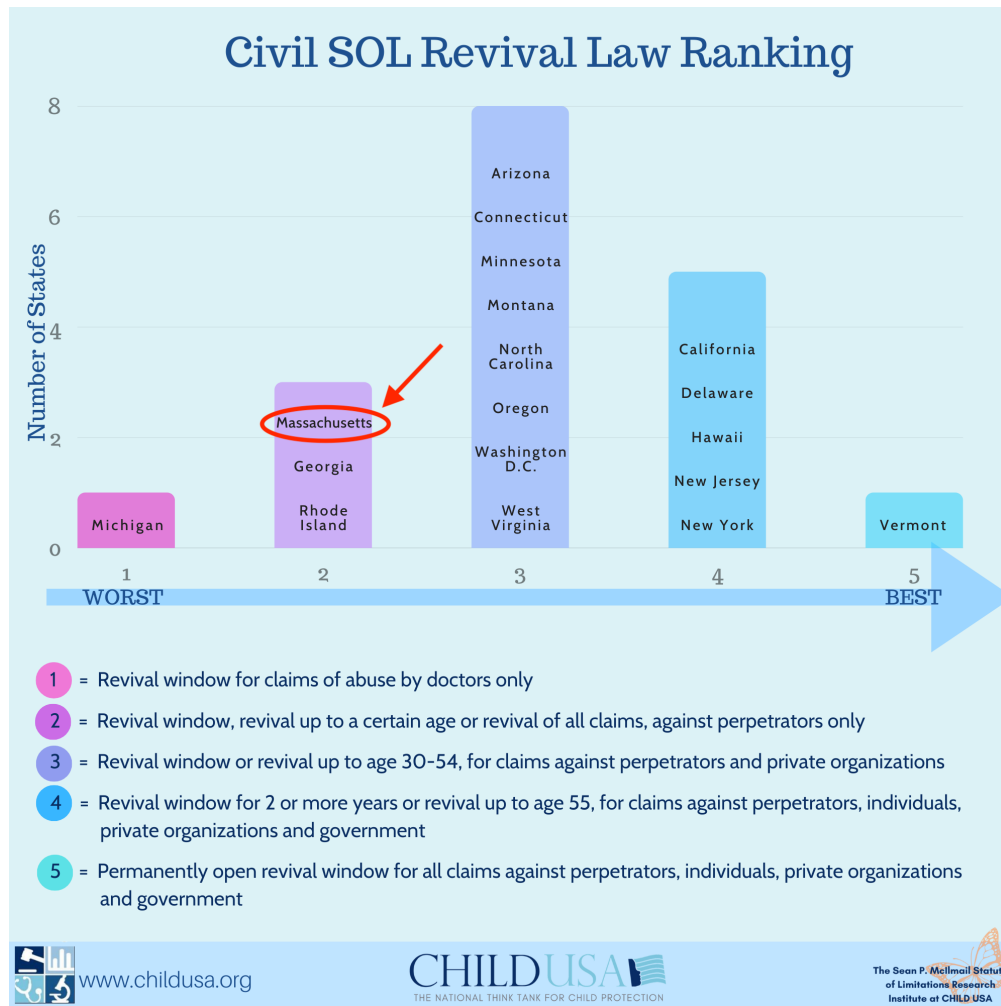
The Massachusetts law revived only some time-barred child sex abuse claims, but left many survivors without recourse. All claims against the person who sexually abused the child were revived up until a survivor turned age 53 or 7 years after the survivor discovered their injuries were caused by the abuse. However, claims against other responsible parties for enabling or covering up the abuse were only revived if a claim was filed within 7 years of discovery. While this was a positive step, many adult survivors, whose claims already expired under the old SOL when they turned 21, are still shut out of the courts and institutions that enabled rampant child sex abuse have yet to be held accountable. Charitable institutions, in particular, have been and continue to be immunized from liability by an archaic law that caps damages against them at \$20,000 for enabling sexual abuse of children.

The states that have revived expired civil SOLs against all parties – not just predators – have learned more about hidden child predators while empowering victims. These broad revival laws do not yield a high number of cases,<sup>7</sup> and they provide long-overdue justice to older victims of

<sup>7</sup> See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Oct. 28, 2020), available at [www.childusa.org/law](http://www.childusa.org/law).

child sex abuse. In contrast, laws which revived claims only against perpetrators have been much less successful. The number of lawsuits filed when a revival window opens has been modest overall, but the states that have experimented with reviving only against perpetrators and not responsible individuals and institutions have yielded an extremely small number of cases. For example, Georgia's perpetrator only revival window yielded only 20 cases.

The following graphic demonstrates how Massachusetts ranks amongst other states regarding its current revival law for civil child sex abuse claims.



### III. Massachusetts Should Not Protect Charitable Organizations that Enable Child Sex Abuse

Massachusetts is one of a dwindling handful of states that has not yet abolished the doctrine of charitable immunity, and the only state that still permits immunity for charitable organizations that willfully enable child sex abuse. Recently, New Jersey, which still has a charitable immunity statute, refused to continue shielding charities from liability for child sex abuse when it enacted a broad revival window in 2019. Child sex abuse has plagued our charitable institutions for too long and without accountability survivors cannot access justice, communities



will remain in the dark about predators lurking within charitable organizations, and charities will not be motivated to change their ways to protect children. S.2815 rightly recognizes the importance of holding all institutions accountable and does not exempt charitable organizations from meaningful liability. This important aspect of the bill signals to survivors that the state stands with them and not with their abusers and the charitable institutions that enabled their abuse.

Therefore, Massachusetts should revive all claims for injury from child sex abuse, like Vermont already did, so that justice will be available for all survivors.

Once again, we commend you for supporting this legislation, which is desperately needed to help survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. Massachusetts children deserve SOL reform to protect them today and into the future. Eliminating the civil SOL and reviving expired claims is a positive step for Massachusetts children and families.

Please do not hesitate to contact us if you have questions regarding SOL reform or if we can be of assistance in any way on other child protection issues.

Sincerely,



Marci A. Hamilton, Esq.  
Robert A. Fox Professor of Practice  
Senior Resident Fellow, Program for Research on Religion  
University of Pennsylvania  
marcih@sas.upenn.edu  
(215) 353-8984



Kathryn Robb, Esq.  
Executive Director  
CHILD USAadvocacy  
3508 Market St., Suite 201  
Philadelphia, PA 19104