



January 30, 2021

The Honorable Lawrence R. Klemin, Chair,
And Honorable Members of the House Judiciary Committee
The North Dakota Legislature
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

RE: House Bill No. 1382, a Bill for an Act to amend and reenact section 28-01-2.5 of the North Dakota Century Code, relating to limitations on actions alleging childhood sexual abuse; and to provide an expiration date.

Dear Chairman Klemin and members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USA Advocacy, to submit testimony regarding HB 1382, which will increase access to justice for victims of childhood sexual abuse and enhance protection for children in North Dakota. If passed, this legislation will make North Dakota 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.

Kathryn Robb 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. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up HB 1382, which will open a 2-year revival window during which all claims, previously time barred by the prior SOL, will be revived. This will allow all past victims of child sex abuse to come forward and pursue civil justice while the



window is open. This will also greatly reduce the present danger to children in North Dakota 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 North Dakota 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 five girls and one in thirteen 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 North Dakota 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 educates the public about the danger of child sexual abuse. When predators are exposed, particularly high-profile ones like Larry Nassar and Jeffrey Epstein, the press and media industry publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children. 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 children to be aware of the signs of grooming and abusive behavior and create more social awareness to help keep kids safe.

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.



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There are untold numbers of hidden child predators in North Dakota who are preying on one child after another because the existing SOLs provide that opportunity. By opening a window, access to justice for past victims will be available; this will also greatly reduce the present danger to the children of North Dakota.

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, including North Dakota, 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. 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 child sex abuse victims tell anyone they were abused.**¹ 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. It is well-established that most victims miss the SOL deadlines because of the delayed disclosure that is caused by the trauma child sex abuse inflicts on the victim. The reasons for delay are specific to each individual, but often involve mental and/or physical health issues that result from the sex abuse (e.g., depression, PTSD, substance abuse, alcoholism, and physical ailments) and the large power differential between the child victim and the adult perpetrator, as well as the power dynamics of the institution. Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.

¹ Delayed disclosure studies available at *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

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. North Dakota Should Join the National Trend Toward SOL Reform for Child Sex Abuse by Opening a Revival Window for Expired 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 reform movement from 2002 through 2019, see CHILD USA's 2019 SOL Report.² 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with twenty-three states and Washington D.C changing their SOLs for the better in 2019.³ The powerful SOL reform wave rode its way into 2020, with thirty states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.⁴ In January of 2021 alone, 19 states have already introduced SOL reform bills.⁵

The graphic below provides a national overview of SOL reform for child sex abuse and details the states that currently in 2021 have the best criminal and civil SOL laws. Notably, North Dakota is not on this list as it has the worst SOLs for child sex abuse.

² 2019 SOL Report, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/sol-report-2019.

³ 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 Jan. 22, 2021), available at www.childusa.org/2019sol.

⁴ See *2020 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2020sol.

⁵ See *2021 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2021sol.

THE BEST CHILD SEX ABUSE STATUTES OF LIMITATION BY JURISDICTION

42
States & DC

NO CRIMINAL SOL FOR SOME OR ALL CSA CRIMES

All States and DC eliminated SOLs except IA, MN, NV, NH, ND, OH, OK, OR

12
States

NO CIVIL SOL FOR SOME OR ALL CSA CLAIMS

AK, CT, DE, FL, IL, ME, MN, NE, NV, NH, UT, VT and Guam

17
States & DC

REVIVAL OR WINDOW LAW FOR EXPIRED CIVIL CLAIMS

AZ, CA, CT, DE, GA, HI, MA, MI, MN, MT, NJ, NY, NC, OR, RI, VT, WV, DC and Guam

As of January 1, 2021



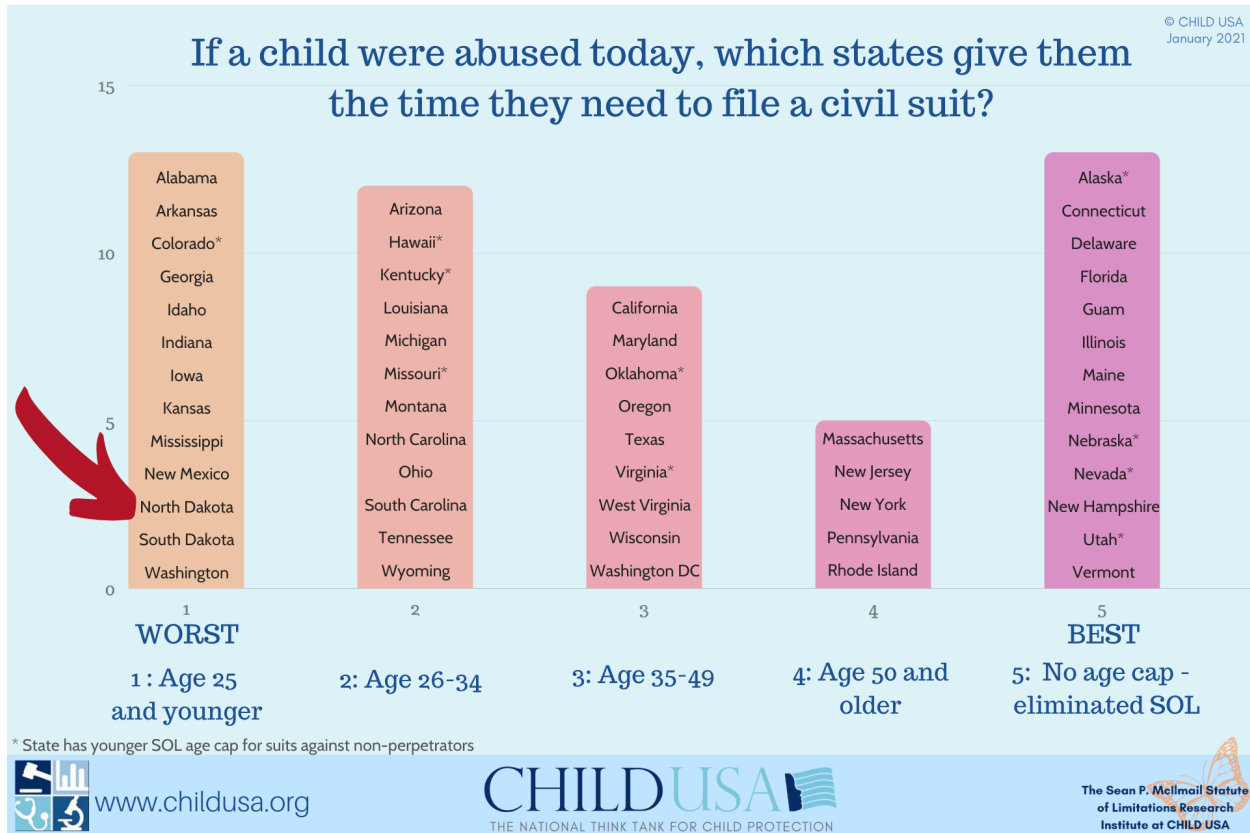
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Institute at CHILD USA

North Dakota's civil SOL for child sex abuse is currently the shortest in the nation, expiring after a survivor reaches age 19. There is a discovery rule which could extend the SOL for some survivors until 10 years after they "knew or reasonably should have known that a potential claim exists." In practice though, this discovery rule has not been helpful to victims in North Dakota, and claims have expired long before victims were ready to tell anyone they were abused.

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

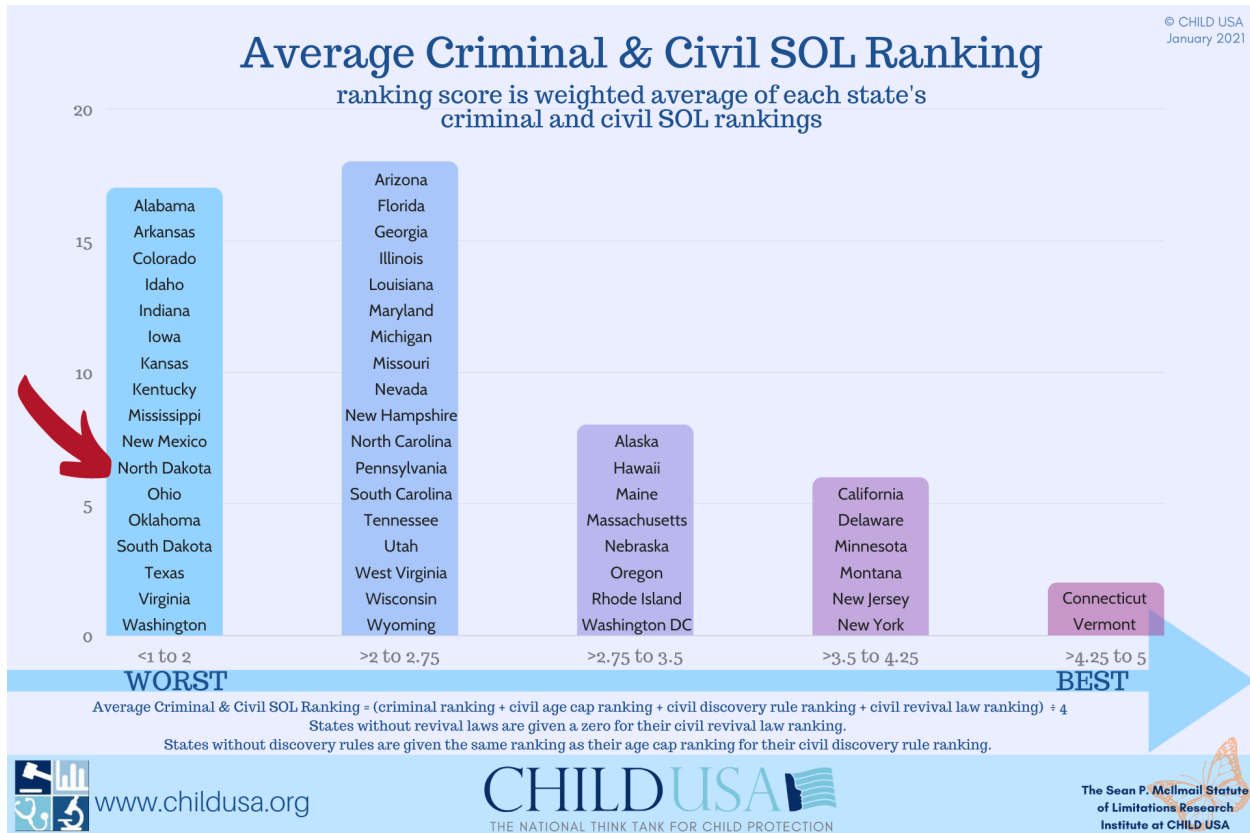


North Dakota's criminal SOLs are not much better. The current criminal SOL for prosecuting child sex abuse crimes ranges between when a victim reaches age 21 and age 36, with applicable reporting and DNA rules, but historically the SOL was much shorter. In comparison, forty-two states already permit prosecution of some or all child sex abuse crimes at any time, meaning they have no criminal SOLs.

North Dakota currently has the shortest criminal and civil SOLs in the United States.

Which means that victims of child sex abuse in North Dakota have the least access to justice when compared with victims that were abused in any other state. Also, North Dakota has been shielding the perpetrators of horrific acts of sex assault on children from liability and prosecution for their crimes with unreasonably short statutes of limitations. The result is that the public has no idea who the predators are and these predators remain free to continue abusing children.

The graphic below depicts CHILD USA's overall average ranking of each state's criminal and civil SOLs. This ranking is based on each state's civil rankings (including age caps, discovery rules, and revival laws) and the criminal rankings of each state. On a scale of 0-5, overall, North Dakota ranks as a 0.75, making it the lowest ranking state.



For past crimes, if the time limit for prosecuting perpetrators has already expired, there is nothing that can be done on the criminal side to help victims access justice. It is unconstitutional to revive expired criminal SOLs. *Stogner v. California*, 539 U.S. 607 (2003). There is literally only one way to restore justice to these adult victims of child sex abuse and that is to revive their expired civil claims 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.

At this point, seventeen states, Washington D.C. and Guam have enacted revival laws for child sex abuse claims – which revive expired civil claims that had been blocked by unfairly short SOLs.⁶ 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,⁷ but provide long-overdue justice to older victims of child sex abuse. The most popular method for revival has been with a window like the one HB 1382 is proposing.

Revival windows for child sex abuse have varied in length and by the types of defendants that are permitted to be sued. The absolute best windows are Vermont's and Guam's which are permanently open and completely revive all expired claims. The next best windows are in California, Delaware, Hawaii, New Jersey and New York because the windows are open for 2 or


⁶ For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at <https://childusa.org/wp-content/uploads/2020/05/1.18.21-Civil-Revival-Laws-in-17-States-and-DC-Since-2002.pdf>.


⁷ See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/law.

more years and apply to claims against any type of defendant: perpetrators, individuals, institutions and the government. The states that have revived expired civil SOLs against all parties – not just predators – have learned more about hidden child predators while empowering victims. The less effective window is Georgia's, which only revived claims against perpetrators and not against the institutions that were negligent or actually aware of abuse and failed to stop it. Institutional child sex abuse is a systemic problem occurring in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen, by looking the other way or covering up abuse when it's reported, the children these institutions serve remain at risk today. The worst window is Michigan's, which only helped victims of Dr. Larry Nassar and left a gaping hole of injustice for all other Michigan victims of child sex abuse.

The following graphic is a revival window report card, grading each state's window based on how helpful it is to survivors and to society by exposing hidden predators within the states.

Window Report Card		
A window is a law that revives expired civil claims and allows adult survivors to sue for child sex abuse they endured years ago while the window is open		
A+	Vermont & Guam	Window permanently open for claims against <u>all</u> types of defendants
A	California, Delaware, Hawaii New Jersey & New York	Window open for 2 or more years for claims against <u>all</u> types of defendants
B	Arizona, Minnesota & North Carolina	Window open for more than 1 year, but not explicitly applicable to claims against all types of defendants
B-	Montana	Window open for 1 year only
C	Washington D.C.	Window open for claims by survivors under age 40 only, with some exceptions
C-	Georgia	Window open for claims against perpetrators only
D	Michigan	Window open for claims of abuse by perpetrator doctors only (Larry Nassar)
F	All Other States	No window, hidden predators are protected


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of Limitations Research
Institute at CHILD USA

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. North Dakota's children deserve SOL reform to protect them today and into the future. Opening a window for expired claims is a positive step for North Dakota's 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,

A handwritten signature in dark ink, appearing to read "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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A handwritten signature in dark ink, appearing to read "Kathryn Robb". The signature is bold and cursive, with a prominent "K" and "R".

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