



TO: The Honorable Gail Chasey, Chair, The Honorable Micaela Lara Cadena, Vice Chair, and Honorable Members of the House Judiciary Committee

FROM: Marci Hamilton, CEO & Legal Director, CHILD USA; Robert A. Fox Professor of Practice, University of Pennsylvania and Kathryn Robb, Executive Director, CHILD USAAdvocacy

RE: HB 56, elimination of criminal SOL for child sex trafficking

DATE: February 12, 2021

Dear Chairwoman, Vice Chairwoman, and Members of the Committee on Human Services,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding HB 56, which will increase access to justice for victims of childhood sex trafficking and enhance protection for children in New Mexico. If passed, this legislation will make New Mexico a leader in the fight to protect children's rights.

By way of introduction, Marci Hamilton is the Founder, CEO, and Legal Director of CHILD USA, an interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where she is a Professor in the Fels Institute of Government. She authored *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 is the leading expert on the history and constitutionality of SOL reform.

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of SOL reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

Kathryn Robb is the Executive Director of CHILD USAAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up HB 56.

HB 56 would eliminate the criminal SOL for child sex trafficking crimes, as well as clarifying the definition of sex trafficking to include non-monetary compensation. HB 56 would remove consent, mistake as to age, and prior sexual history of a victim as defenses to child sex trafficking. If passed, this legislation will bring New Mexico closer to being a leader in the fight to protect children's rights.



I. HB 56 Will Correctly Identify Children as Victims

There is a worldwide epidemic of child sex trafficking, with millions of people being trafficked for sex¹, 94% of which are women and girls.² Traffickers range from powerful individuals like Jeffrey Epstein,³ to pimps, to parents.⁴ In 2019, Polaris Project worked on trafficking cases involving 22,326 individual survivors in the United States through the National Trafficking Hotline.⁵ According to the National Center for Missing and Exploited Children, **1 out of 6 children reported missing is “likely [a victim] of child sex trafficking”** based on case information.⁶ According to Street Safe New Mexico, **there are an estimated 11,522 victims of sex trafficking in New Mexico on any given day**, the majority of whom are children.⁷

According to federal law, **any child engaged in commercial sex is a victim of a severe form of sex trafficking.**⁸ The federal law correctly acknowledges that children are incapable of consenting to sex. Moreover, anyone over the age of 18 engaged in commercial sex who has experienced any form of physical or sexual force, coercive grooming, financial coercion, or manipulative fraud at any time is also considered a victim.

HB 56 correctly identifies children as victims, bringing its interpretation into line with federal law. It also underscores this change by removing consent and mistake as to age as a possible defense for child sex trafficking, as well as preventing a defendant from making a victim’s prior sexual history public. These changes encourage an attitude shift in victims, law enforcement, members of the judiciary, and the public to recognize victims as victims, and to remove misplaced stigma that may keep victims from coming forward.

II. The Science of Delayed Disclosure Supports SOL Reform for Child Sex Trafficking

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.⁹ It is now settled that PTSD, memory deficits, and complete

¹ Goodman, Jill Laurie, and Dorchen A. Leidholdt, eds. *Lawyer’s Manual on Human Trafficking*, NEW YORK STATE JUD. COMM. ON WOMEN IN THE CTS (NY Sup. Ct. App. Div., First Dep’t 2013).

² *Global Report on Trafficking in Persons*, UNODC, 33 (2018), available at https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf.

³ Mahita Gajanan, *Here’s What to Know About the Sex Trafficking Case Against Jeffrey Epstein*, Time (July 17, 2019), available at <https://time.com/5621911/jeffrey-epstein-sex-trafficking-what-to-know/>.

⁴ *The Traffickers*, Nat’l Human Trafficking Hotline (last visited February 12, 2021), available at <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/traffickers>.

⁵ *Myths, Facts, and Statistics*, POLARIS PROJECT (last visited February 11, 2021), available at <https://polarisproject.org/myths-facts-and-statistics/>.

⁶ K. Tate Chambers, Ed., *Human Trafficking*, 65 U.S. ATTORNEY’S BULLETIN, 33 (Nov. 2017), available at <https://www.justice.gov/usao/page/file/1008856/download>.

⁷ *Trafficked Victims*, Street Safe New Mexico (last visited Feb. 11, 2021), available at <https://www.streetsafenewmexico.org/home>.

⁸ 22 U.S.C. § 7102(11)(a).

⁹ VAN DER KOLK, B. THE BODY KEEPS THE SCORE: MEMORY & THE EVOLVING PSYCHOBIOLOGY OF POSTTRAUMATIC STRESS, HARVARD REV. OF PSYCHIATRY (1994) 1(5), 253-65; Jim Hopper, *Why Can’t Christine Blasey Ford*

disassociation are common coping mechanisms for child victims.¹⁰ As a result, it can take years for a victim to acknowledge their abuse.

Trauma is only one of the barriers preventing children from disclosing abuse. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don’t have an adult they can disclose their abuse to, don’t have opportunities to disclose abuse, and aren’t believed when they try to disclose.”¹¹ Studies suggest that many victims, as much as 33%, never disclose their abuse.¹² The disclosure of child sexual abuse and trafficking is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their memory.¹³

In fact, the **average age of disclosure of child sexual abuse, including child sex trafficking, in a study of 1,000 victims was 52 years-old.**¹⁴ Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. Historically, 90% of child victims never go to the authorities and the vast majority of claims have expired before the victims were capable of getting to court.¹⁵

Remember How She Got Home?, SCIENTIFIC AMER. (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA 30 (2019), available at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter “Hoskell”).

¹⁰ Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, FRONTIERS IN PSYCHOL. (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

¹¹ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

¹² *Id.*

¹³ Hoskell, at 24.

¹⁴ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

¹⁵ CDC, *The Adverse Childhood Experiences (ACE) Study*, available at <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also, U.S. Dep’t of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families, and Children’s Bureau, *Child Maltreatment 2017*, (2017) available at <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf>.



It is a medical fact that victims of child sex trafficking 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 trafficking. Short SOLs for child sex trafficking play into the hands of the perpetrators and the institutions that cover up for them; they disable victims’ voices and empowerment. 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 sex trafficking 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. HB 56 seeks to do just that.

III. HB 56 Will Serve the Public Good by Increasing Victims’ Access to Justice and Preventing Future Abuse

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.

Current New Mexico law provides that a prosecution for child sex trafficking must be commenced within 5 years of the abuse for victims aged 16-18, within 6 years of the abuse for victims aged 13-15, or at any time for victims under age 13.¹⁶ However, the Department of Human Services found in a 2019 report that 83.6% of all victims of child trafficking in the United States are age 13-18.¹⁷ HB 56 would eliminate the criminal SOL, allowing more victims to come forward when they are ready.

¹⁶ N.M. STAT. ANN. §§ 30-1-8; 30-52-1.

¹⁷ U.S. Dep’t of Health and Human Services Administration for Children and Families, Administration on Children, Youth and Families, and Children’s Bureau, *Child Maltreatment 2019*, 105 (2019) available at https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2019_4.pdf.

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE



Identifies previously unknown predators and institutions responsible

to the public, shielding other children from future abuse.



Shifts the cost of abuse

from the victims and society 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

CHILDUSA
THE NATIONAL THINK TANK FOR CHILD PROTECTION

The Sean P. McInnis Institute
of Limitations Research
Institute at CHILD USA

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 and criminals from being prosecuted. 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 and child sex trafficking. Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.

As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. By allowing prosecutors and victims the time they need to prosecute a child sex trafficking case, hidden predators are brought into the light and are prevented from abusing more children. Eliminating the criminal SOL removes an unnecessary barrier to prosecution while still holding prosecutors to a high bar of proving trafficking “beyond a reasonable doubt.” SOL reform also educates the public about the danger of child sexual abuse.

IV. New Mexico Should Join the National Trend Toward SOL Reform for Child Sex Trafficking by Eliminating its Criminal SOL

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 2020, see CHILD USA's 2020 SOL Report.¹⁸ 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more aware of the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with 23 states and Washington D.C changing their SOLs for the better in

¹⁸ 2020 SOL Report, CHILDUSA.ORG (last visited Feb. 10, 2021), available at www.childusa.org/sol-report-2020.

2019.¹⁹ The powerful SOL reform wave rode its way into 2020, with 30 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.²⁰ By February of 2021, 22 states have already introduced SOL reform bills.²¹

25 states have already eliminated the criminal SOL for child sex trafficking.²² This proposed elimination of the criminal SOL among the other changes suggested in HB 56 is in line with the recent trend to eliminate the criminal SOL and to give victims into their 50's time to come forward in accordance with the delayed disclosure of abuse science. New Mexico has already eliminated the criminal SOL for first-degree violent felonies and sex trafficking of children under age 13. HB 56 rightly expands that list to include 13-18 year-old victims. It also better aligns New Mexico's definitions of child sex trafficking to those of the federal government, to highlight the reality that children caught in sex trafficking are victims.

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. New Mexico's children deserve SOL reform to protect them today and into the future. Extending the time for survivors to file suit and opening a window for expired claims is a positive step for New Mexico'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,



Marci A. Hamilton, Esq.
Founder, CEO & Legal Director
CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
(215) 539-1906



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

¹⁹ 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.

²⁰ See *2020 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2020sol.

²¹ See *id.*

²² See *Child Sex Trafficking*, [childusa.org](https://childusa.org/trafficking/) (last visited February 12, 2021), available at <https://childusa.org/trafficking/>.