



TO: Representative Jon Hansen, Chairman, The Honorable Representative Mike Stevens, Vice-Chairman, and Honorable Members of the House Judiciary Committee

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

RE: HB 1178, An act to rescind the civil statute of limitations for child sexual abuse
HB 1181, An act to authorize the revival of certain claims

DATE: February 20, 2021

Dear Chairman Hansen, Vice-Chairman Stevens, and members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding HB 1178 and HB 1181, which will increase access to justice for victims of child sexual abuse and enhance protection for children in South Dakota. If passed, this legislation will make South Dakota a leader in the fight to protect children.

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 1178, which would eliminate the civil statute of limitations for child sexual abuse claims against any perpetrator or culpable entity. It would also expressly rescind the age limit that prohibits victims from bringing claims against entities after age 40. We also commend you and the Committee for taking up HB 1181, which would open a two-year revival window during which claims against individuals, previously time



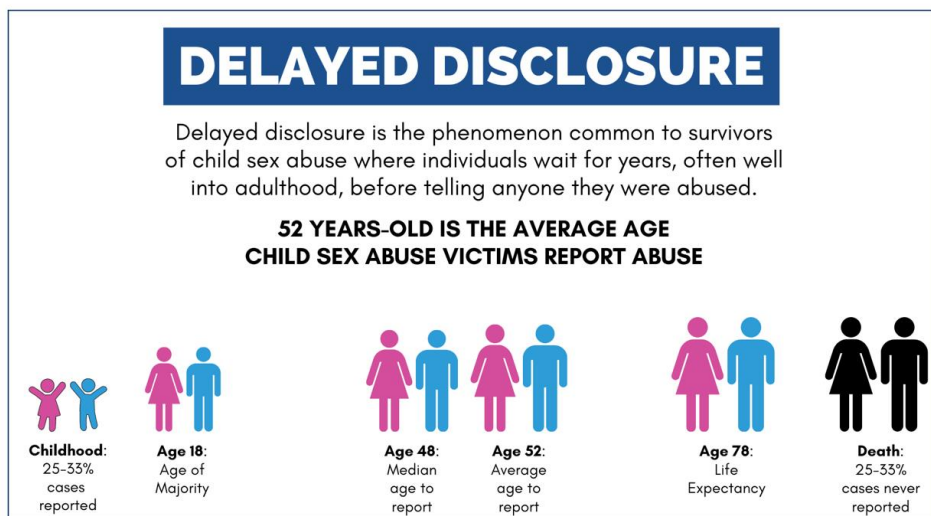
barred, will be revived. It would also enable institutions, as well as individuals, to bring claims for child sexual abuse. This will allow all past victims of child sex abuse to come forward and pursue civil justice while the window is open until July 1, 2023.

I. Delayed Disclosure Science Supports SOL Reform for Child Sex Abuse

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.**ⁱ 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.ⁱⁱ It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.ⁱⁱⁱ

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.”^{iv} Studies suggest that many victims, as much as 33%, never disclose their abuse.^v The disclosure of child sexual abuse 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.^{vi}

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**^{vii} 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.



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.

II. SOL Reform Serves 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 obtaining justice and naming their perpetrators publicly for fear of retaliation. 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 opening a window, access to justice for past victims will be available; this will also greatly reduce the present danger to the children of South Dakota.

There are three compelling public purposes served by window legislation:


- 1) **A window identifies hidden child predators and the institutions** that allowed the abuse to the public so children will not be abused in the future;
- 2) **It shifts the cost of abuse** from the victims and society to those that caused it; and
- 3) **It educates the public** about the prevalence and harm from child sex abuse to prevent future abuse.

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.


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. Mellmail Statute
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When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press and media industry publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse. By shedding light on the problem, parents and others are better able to identify abusers and responsible institutions 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, while supporting institutions to implement accountability and safe practices.

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.

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. 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 past-expired claims to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. 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.

III. South Dakota Should Join the National Trend Toward SOL Reform for Child Sex Abuse by Eliminating its Civil SOL and Opening a Revival Window

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.^{viii} 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 23 states and Washington D.C changing their SOLs for the better in 2019.^{ix} 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.^x By February of 2021, 26 states have already introduced SOL reform bills.^{xi}

For claims against perpetrators and institutions, South Dakota's SOL expires when victims reach age 21 or 3 years after discovering their injuries. This means the civil SOL expires more than *three decades* before the average victim will tell anyone they were abused. In 2010, South Dakota passed an age limit barring any victim over 40 years-old from bringing a civil claim against an

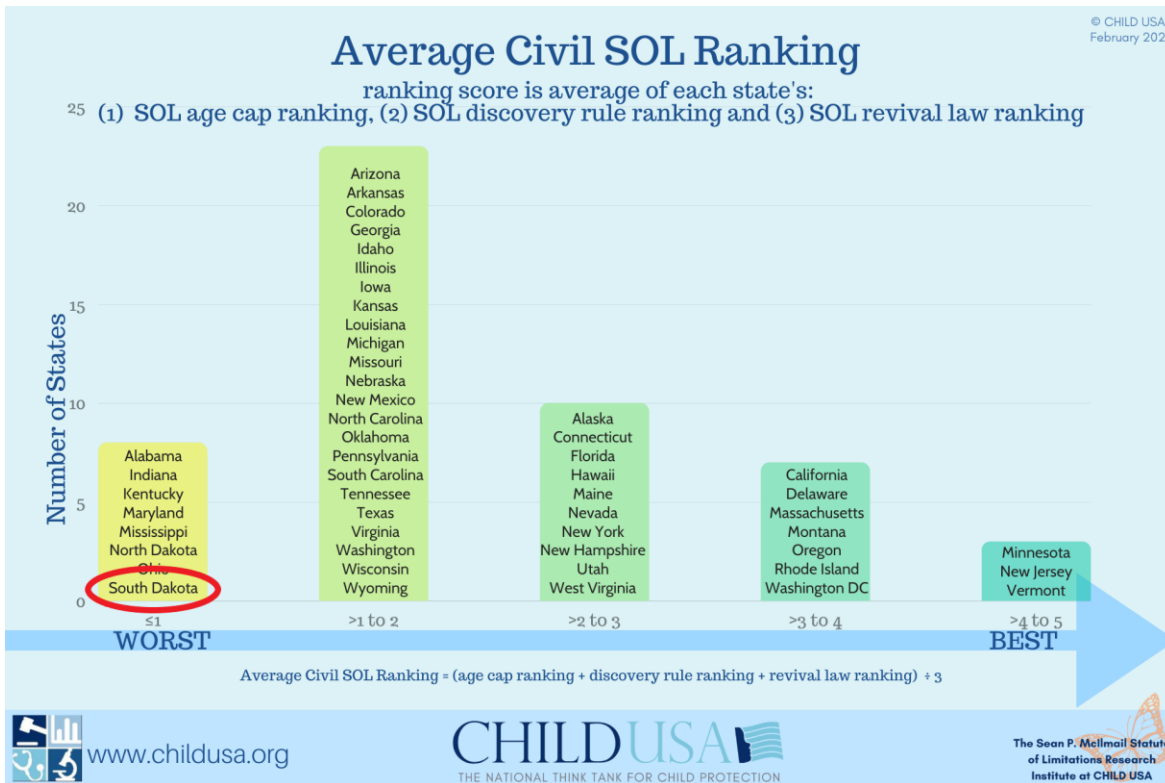
entity. This limitation kept a broad class of victims from coming to court, while protecting the institutions that sheltered abusers and covered up the abuse.

This proposed window and civil SOL elimination is more in line with the recent trend to eliminate the civil SOL and to give older victims more time to come forward in accordance with the delayed disclosure of abuse science.

The following graphic demonstrates how South Dakota ranks amongst other states regarding its age cap for civil child sex abuse claims. South Dakota ranks as one of the worst states because the SOL expires when victims are in their early 20's.



The graphic below depicts CHILD USA's average ranking of each state's civil SOLs (including age caps, discovery rules, and revival laws). South Dakota ranks as one of the worst states.



There is only one way to restore justice to these adult victims of child sex abuse: 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.

18 states, Washington D.C. and Guam have enacted revival laws for child sex abuse claims.^{xii} States that have revived expired civil SOLs have learned about hidden child predators and institutions that harbored them while empowering victims. These revival laws do not yield a high number of cases,^{xiii} but provide long-overdue justice to older victims of child sex abuse.

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 and by looking the other way or covering up abuse when it's reported, the **children these institutions serve remain at risk today**. HB 1178 eliminates future victims' barrier to bring claims against entities for child sexual abuse. This sends a strong message to youth serving organizations in South Dakota that the state will not tolerate "passing the trash" or looking the other way when a person is raping or molesting a child in their midst.

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



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ⁱ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

ⁱⁱ van der Kolk, B. *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress*. Harvard Review of Psychiatry (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford 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").

ⁱⁱⁱ 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>.

^{iv} 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).

^v *Id.*

^{vi} Hoskell, at 24.

^{vii} 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>.

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

^{ix} 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.

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

^{xi} *Id.*

^{xii} For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/law.

^{xiii} 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.