

**TO:** Senator Rhonda Fields, Chair, and Honorable Members of the Senate Health and Human Services Committee

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

**RE:** SB21-073: Civil Action Statute of Limitations Sexual Assault

**DATE:** February 21, 2021

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Dear Chairman Fields and members of the Senate Health and Human Services Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding SB21-073, which will increase access to justice for victims of child sexual abuse and enhance protection for children in Colorado. If passed, this legislation will make Colorado 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. 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 SB21-073, which would eliminate the civil statute of limitations for child sexual abuse claims.

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

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.”<sup>iv</sup> Studies suggest that many victims, as much as 33%, never tell anyone they were abused.<sup>v</sup> 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.<sup>vi</sup>

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**<sup>vii</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.



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 Colorado 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 Colorado.

**There are three compelling public purposes served by child sex abuse SOL reform:**

- 1) SOL reform **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](http://www.childusa.org)

**CHILDUSA**

THE NATIONAL THINK TANK FOR CHILD PROTECTION

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

SOL reform validates 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. This is especially important because predators abuse into their elderly years and on average have 100 victims.

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 (i.e. Netflix's *Jeffrey Epstein: Filthy Rich* and HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal*). By shedding light on the problem, parents and others are better able to identify abusers and responsible institutions and prevent further abuse. This knowledge helps to educate children to be aware of the signs of grooming and abusive behavior and create more social awareness to help keep kids safe, while also supporting institutions to implement accountability and safe practices.

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. Colorado Should Join the National Trend Toward SOL Reform for Child Sex Abuse by Eliminating its Civil 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 since 2002, see CHILD USA's Report: History of US SOL Reform: 2002-2020.<sup>viii</sup> 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.<sup>ix</sup> 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.<sup>x</sup> By February of 2021, 27 states have already introduced SOL reform bills.<sup>xi</sup>

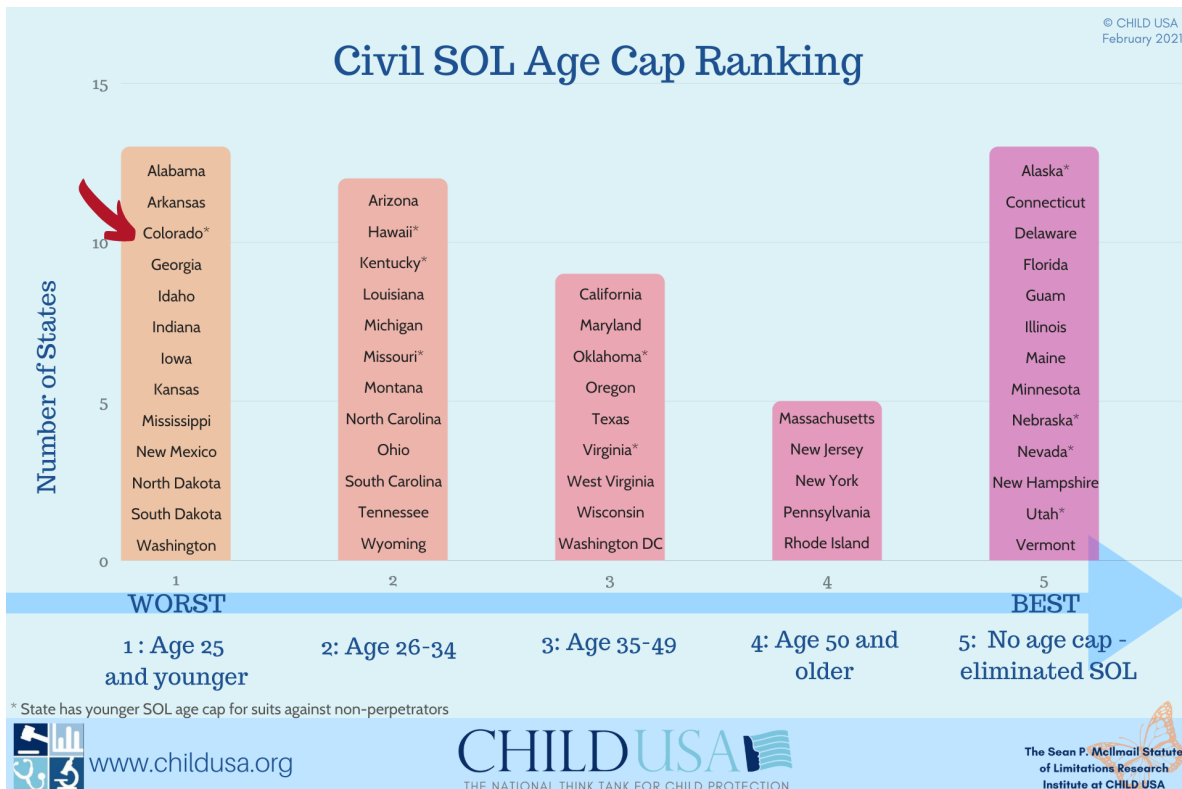
For claims against perpetrators, Colorado's SOL expires when a victim reaches age 24 or 6 years after discovering their injuries were caused by the abuse. For claims against other individuals and institutions, Colorado's SOL expires when victims reach age 20 for negligence and 21 for fraud,

or 2-3 years after discovery. This means the civil SOL expires nearly *three decades* before the average victim will tell anyone they were abused. Colorado's short SOL has kept a broad class of victims from coming to court, while protecting the institutions that sheltered abusers and covered up the abuse.

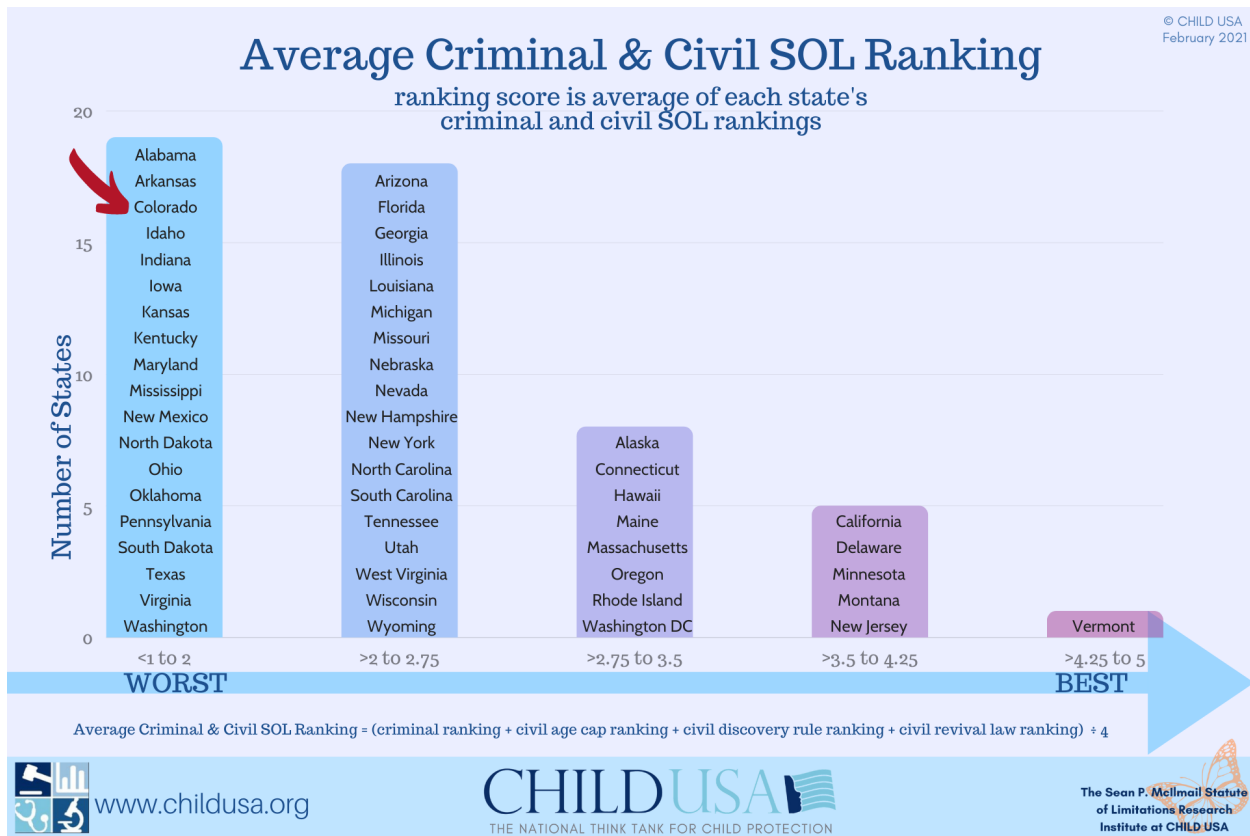
Institutional child sex abuse is a systemic problem occurring in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen and by looking the other way or covering up abuse when it's reported, the **children these institutions serve remain at risk today**. SB21-073 eliminates future victims' barrier to bring claims against entities for child sexual abuse. This sends a strong message to youth serving organizations in Colorado 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. This bill will incentivize youth serving organizations to implement prevention policies and take action immediately to report abuse in real time.

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

The following graphic demonstrates how Colorado ranks amongst other states regarding its current age cap for civil child sex abuse claims. Overall, 12 states and Guam have eliminated civil SOLs for child sex abuse and they are ranked below as the best.<sup>xii</sup> Another 5 states have extended civil SOLs past 50 years of age.<sup>xiii</sup> Colorado ranks as one of the worst states because its SOL expires when victims are in their early 20's. In 2021, Colorado stands alongside 11 other states seeking to eliminate their civil SOLs.<sup>xiv</sup>



The graphic below depicts CHILD USA's average ranking of each state's current criminal and civil SOLs (including age caps, discovery rules, and revival laws). Colorado currently ranks as one of the worst states for justice for child sex abuse 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. Colorado's children deserve SOL reform to protect them today and into the future. Eliminating the time for survivors to file suit is a positive step for Colorado'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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- <sup>i</sup> 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).
- <sup>ii</sup> 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](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf) (hereinafter “Hoskell”).
- <sup>iii</sup> 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>.
- <sup>iv</sup> 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).
- <sup>v</sup> *Id.*
- <sup>vi</sup> Hoskell, at 24.
- <sup>vii</sup> 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>.
- <sup>viii</sup> CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Feb. 10, 2021), available at [www.childusa.org/sol-report-2020](http://www.childusa.org/sol-report-2020).
- <sup>ix</sup> For more information on SOL reform in 2019, visit *2019 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at [www.childusa.org/2019sol](http://www.childusa.org/2019sol).
- <sup>x</sup> See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).
- <sup>xi</sup> *Id.*
- <sup>xii</sup> AK, CT, DE, FL, IL, ME, MN, NE, NV, NH, UT, and VT. For information on civil SOL elimination, see *2021 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).
- <sup>xiii</sup> MA, NJ, NY, PA, & RI.
- <sup>xiv</sup> CT, FL, IN, IA, MD, MA, MN, NJ, NY, OK & SD. See *2021 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).