

TO: The Honorable Sylvia Luke, Chair, The Honorable Ty J.K. Cullen, Vice Chair, and Honorable Members of the Committee on Finance

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

RE: HB 570, relating to sexual abuse of minors

DATE: March 2, 2021

Dear Chairman Luke, Vice Chairman Cullen and Members of the House Committee on Finance,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAdvocacy, to submit testimony regarding HB 570, which will increase access to justice for victims of childhood sexual abuse and enhance protection for children in Hawaii. If passed, this legislation will make Hawaii 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 USAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAdvocacy 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 570, which will extend the civil SOL for victims to bring child sex abuse claims to court from the current limit of age 26 or 3 years from discovery to age 68 or 5 years from discovery. It would also open a revival window during which all claims, previously time barred, will be revived and permit recovery of treble damages against institutions that were reckless or failed to report abuse. This will allow all past victims of child sex abuse to come forward and pursue civil justice while the window is open until April 24, 2024.

I. SOL Reform Serves the Public Good by 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 Hawaii 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 Hawaii.

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.

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.


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The Sean P. Meilmail Statute of Limitations Research Institute at CHILD USA

SOL reform, and window laws in particular, validate victims and shift the cost of abuse from victims and the public 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.

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.

II. 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**.¹ 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.² It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.³

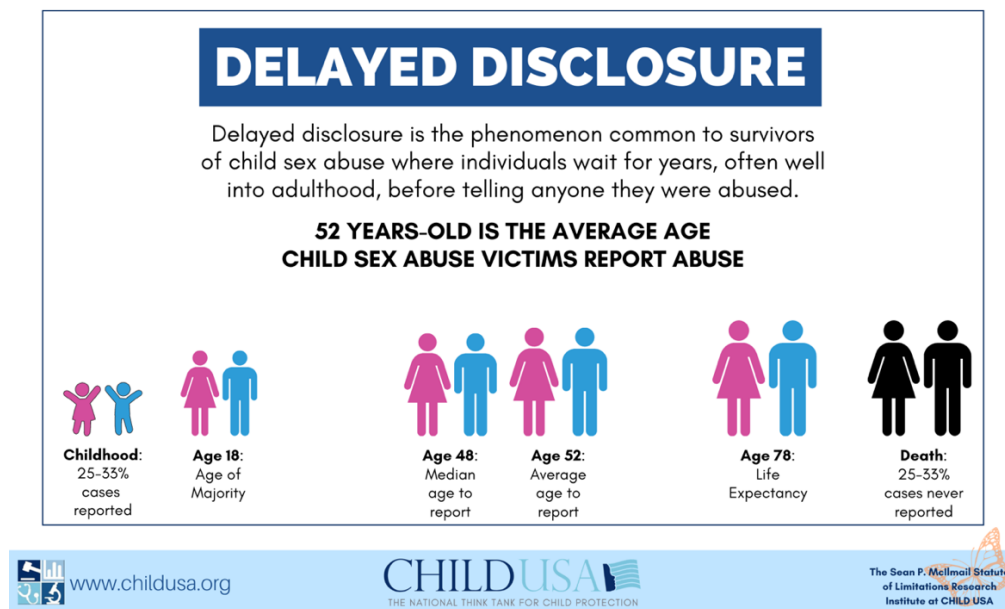
¹ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A 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).

² 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").

³ 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>.

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.”⁴ Studies suggest that many victims, as much as 33%, never disclose their abuse.⁵ 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.⁶

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**⁷ 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

⁴ 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)).

⁵ *Id.*

⁶ Hoskell, at 24.

⁷ 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>.

hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment.

III. Hawaii Should Join the National Trend Toward Meaningful SOL Reform for Child Sex Abuse by Extending its Civil SOL and 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 2020, see CHILD USA's Report: History of U.S. SOL Reform.⁸ 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 2019.⁹ 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.¹⁰ By March of 2021, 29 states have already introduced SOL reform bills.¹¹

Hawaii has positioned itself as a leader in the SOL reform movement, by enacting the longest civil revival window, during which survivors of child sex abuse were able to file civil claims for past abuse that would have otherwise been time-barred. That being said, the revival window is now closed and Hawaii's current civil SOL which expires when victims are in their 20's is short in comparison to the rest of the states.

For claims against perpetrators, Hawaii's SOL expires when victims reach age 26 or 3 years after discovering their injuries. It is even shorter for claims against institutions, expiring when victims reach age 20 or 2 years after discovery. This means the civil SOL expires almost *three decades* before the average victim will tell anyone they were abused. Extending the SOL against perpetrators to age 68 or 5 years from discovery would be a significant improvement. However, the SOL against institutions would still expire at age 20 or 2 years from discovery, which immunizes institutions who covered up or enabled abuse.

This proposed window and civil SOL extension against perpetrators to age 68 is in line with the recent trend to eliminate the civil SOL and to give victims into their 50's time to come forward in accordance with the delayed disclosure of abuse science.

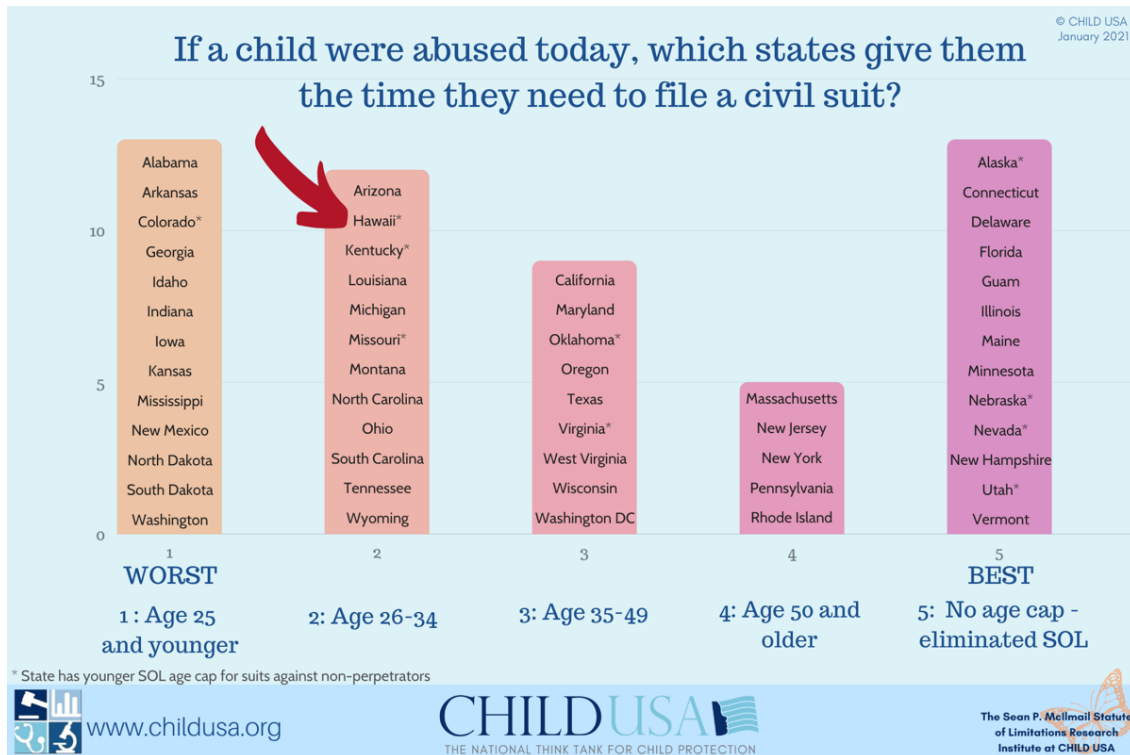
The following graphic demonstrates how Hawaii ranks amongst other states regarding its age cap for civil child sex abuse claims.

⁸ 2020 SOL Report, CHILDUSA.ORG (last visited March 2, 2021), available at www.childusa.org/2020-sol-report/.

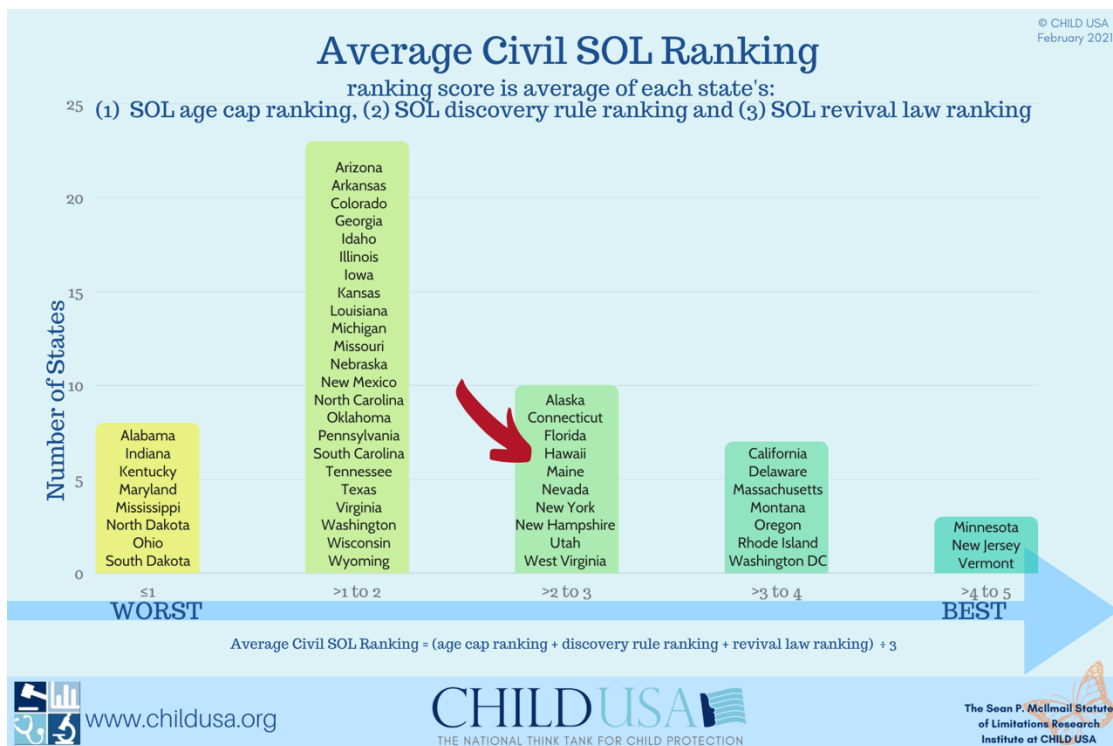
⁹ For more information on SOL reform in 2019, visit *2019 SOL Tracker*, CHILDUSA.ORG (last visited March 2, 2021), available at www.childusa.org/2019sol.

¹⁰ See *2020 SOL Tracker*, CHILDUSA.ORG (last visited March 2, 2021), available at www.childusa.org/2020sol.

¹¹ See *2021 SOL Tracker*, CHILDUSA.ORG (last visited March 2, 2021), available at www.childusa.org/2021sol.



The graphic below depicts CHILD USA's average ranking of each state's civil SOLs (including age caps, discovery rules, and revival laws). On a scale of 0-5, overall, Hawaii ranks as a 3, making it above average amongst the 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. Hawaii is one of 18 states, Washington D.C. and Guam to enact revival laws for child sex abuse claims.¹² Hawaii has already made great progress for adult survivors of child sex abuse with a revival window that was open for a total of 6 years. Unfortunately, **the window closed on April 24, 2020, and now survivors who have not yet come to terms with their abuse are shut out of court again by Hawaii's short civil SOL.**

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. Hawaii's window ranks high, with only Vermont and Guam which have permanently open windows, ranking higher.

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 & Utah*	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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¹² For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited March 3, 2021), available at www.childusa.org/law.

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,¹³ 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 570's window provision permits recovery of treble damages against institutions if the institution failed to report child sex abuse or disregarded evidence that a person had previously sexually abused a child. This sends a strong message to youth serving organizations in Hawaii 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. Hawaii'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 Hawaii'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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¹³ 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.