

TO: Members of the Michigan House of Representatives

FROM: Marci A. Hamilton
CEO and Academic Director

DATE: April 9, 2018

RE: Factual Analysis of Bills to Extend Child Sex Abuse Statutes of Limitations

On behalf of CHILD USA, a national think tank to end child abuse and neglect, I am writing to provide facts regarding statutes of limitations (SOLs) for child sex abuse. I have studied, followed, and written about child sex abuse statutes of limitations for nearly 20 years. One of the missions of CHILD USA, for which I am the founder and CEO, is to track the child sex abuse SOLs and to educate the public on child sex abuse SOL reform. State-by-state information on the SOLs can be found at www.childusa.org I hope that the following will be helpful in creating a safer environment for children in Michigan.

Like many states, Michigan has been considering extending the SOLs for child sex abuse crimes and civil actions. Michigan currently has some of the shortest child sex abuse statutes of limitations in the United States, which has resulted in a culture that protects abusers at the expense of the safety of Michigan's children. 1 in 4 girls and 1 in 6 boys are sexually abused. When the victims are not permitted access to justice, the abusers remain anonymous and dangerous.

The recent, widely publicized sex abuse by Dr. Larry Nassar of elite gymnasts is a symptom of the problem, not the sole problem in Michigan. With Michigan's backward SOLs, there are many pedophiles now operating in the state with impunity. One reason that Nassar was able to abuse so many children and that other pedophiles in the state are hard at work now grooming Michigan's children is that the state legislature has presided over some of the worst SOLs in the country without amendment in many years. In fact, Michigan has the single shortest civil SOL in the United States. Children are at risk in numerous settings from families to institutions. Nassar is just the tip of the iceberg. No SOL reform has been shaped to redress the abuse by one perpetrator or institution, and Michigan's lawmakers should be thinking about the problem of child sex abuse generally.

There is a body of knowledge about child sex abuse and the operation of SOL reform since 2002, which supports Michigan's modest bills. In fact, it would support bills that would provide more expansive opportunities for victims. The following facts will help explain why Michigan needs to enact SOL reform as soon as possible to protect the state's children.



Abusers will abuse into their elderly years. Those who sexually abuse children do not “age out” of the abuse and, therefore, they abuse well into their elderly years. For example, when the Boston Archdiocese’s cover up of child sex abuse was disclosed by the *Boston Globe*’s Spotlight team in 2002, one of the worst priests was John Geoghan, who sexually abused children into his 80s. That means that even a victim who is in middle age can protect other children from sex abuse by pressing charges or by filing a civil lawsuit. Either legal pathway names the perpetrator for the public and makes it more likely that parents and employers can protect the children in their care.

Disclosure of child sex abuse is often delayed for decades. Child sex abuse victims are at an extreme power differential as compared to those who sexually abuse them. Children simply do not comprehend what happened to them and they experience shame and humiliation later that often results in a belief that they “caused” the abuse. The trauma of child sex abuse also creates other barriers to disclosure for many victims. Child sex abuse frequently results in PTSD, depression, alcohol or drug addiction, and many other health problems that interfere with the ability of a victim to disclose the sex abuse.

Most victims disclose, if they disclose at all, during adulthood, with the median age of 48.

Birth	Age 18	Age 48	Age 77	Death
Up to 33% report in childhood ¹	age of majority	median age to disclose	life expectancy	25%-33% never disclose ²

Child predators benefit from delayed disclosure. Right now, the legal system in Michigan is geared to the protection of pedophiles and actively endangers children by hiding the identities of those who sexually assault and abuse children or use them in child pornography. This is a zero-sum game where denying victims justice correspondingly frees up pedophiles to pursue more children.

Why SOL reform is needed: identify hidden predators. SOL reform is not just about justice for the victims, as important as that is. It is also about identifying hidden child predators who have been thriving behind short SOLs that effectively silence the victims. Without these legal pathways for victims, victims may hesitate to come forward due to a legitimate fear that they will be sued for defamation. Pathways to justice through extension, elimination, and revival of child sex abuse SOLs are needed to learn who the hidden child predators in a state are.

¹ KAMALA LONDON ET AL., CHILD SEXUAL ABUSE: DISCLOSURE, DELAY, AND DENIAL, Ch. 2 (Margaret-Ellen Pipe, et al eds., 2007) ([approx. 1/3 disclose in childhood](#)); *Child Sexual Abuse Disclosure: What Practitioners Need to Know*, Darkness to Light, https://www.d2l.org/wp-content/uploads/2016/10/ChildSexualAbuseDisclosurePaper_20160217_v.1.pdf (gathering studies showing approximately 28%-33% disclosure during childhood).

² Or they wait until asked specifically in a study. *Disclosing Sex Abuse Is Critical*, [https://www.sciencedaily.com/releases/2010/01/100119121422.htm?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+sciencedaily+\(ScienceDaily%3A+Latest+Science+News\)](https://www.sciencedaily.com/releases/2010/01/100119121422.htm?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+sciencedaily+(ScienceDaily%3A+Latest+Science+News)) (25% never disclose); *Child Sexual Abuse Disclosure: What Practitioners Need to Know*, Darkness to Light, https://www.d2l.org/wp-content/uploads/2016/10/ChildSexualAbuseDisclosurePaper_20160217_v.1.pdf (gathering studies showing approximately 26-28% do not disclose until specifically asked in adulthood).

It is constitutional to revive expired civil SOLs but unconstitutional to revive expired criminal SOLs.

California attempted to revive both civil and criminal expired SOLs. The civil revival was held constitutional, as it has been in other states. See, e.g., *Roe v. Ram*, No. CV 14-00397 HG-RLP, 2014 WL 10474393 (D. Haw. Nov. 26, 2014); *Melanie H. v. Defendant Doe*, No. 04-1596-WQH-(WMC), slip op. (S.D. Cal. Dec. 20, 2005); *Sliney v. Previte*, 473 Mass 283, 41 N.E.3d 732 (Mass. 2015); *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 419–420 (2015); *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247 (Del. 2011). The same reasoning has been employed in Michigan. *Rookledge v. Garwood*, 65 N.W.2d 785, 790-92 (Mich. 1954) (holding retroactive application of amendment allowing claimants who take workers' compensation benefits to also sue tortfeasor constitutional).

The United States Supreme Court held that the revival of the criminal SOL was a violation of the Ex Post Facto Clause and therefore unconstitutional. *Stogner v. California*, 539 U.S. 607, 610 (2003). The Ex Post Facto Clause is limited to cases involving criminal prosecution and, therefore, is irrelevant in the civil cases.

There is 15 years of experience that supports elimination of the criminal and civil SOLs and the revival of expired civil SOLs. The bills being considered by Michigan are modest. First, the other states that have eliminated the civil or criminal SOLs have not experienced an avalanche of claims. Second, the states that have revived civil SOLs have not had a large number of claims. The following states have revived expired SOLs as indicated and have only had the number of cases indicated, which constitute a tiny percentage of the state's population.

- California (2003) 1-year window revived civil SOLs = 1,150 victims, or .003% of population
- Connecticut (2010) revives expired claims up to age 48 = open-ended so no total available
- Delaware (2007-09) 2-year window revived civil SOLs = 1,175 victims, or .12% of the population (1,000 were victims of pediatrician Dr. Earl Bradley)
- Georgia (2015-17) 2-year window revived civil SOL against perpetrator = 14 victims, .00014% of the population
- Hawaii (2012-2016) 2-year window with 2-year extension revived civil SOLs = 250 victims, .017% of the population (Hawaii is currently considering an additional 4 years)
- Massachusetts (2014) revives civil SOL up to age 53 = open-ended so no total available
- Minnesota (2013-16) 3-year window = 1,000 victims, or .018% of the state population
- Utah (2016) retroactive revival to age 50 and 2-year window against perpetrator only = 1 case

As this summary indicates, the Michigan window that bars claims prior to 1997 is a new approach to window legislation, and will result in even fewer claims.

The supposed problem of old evidence has not posed a problem in other states, because the victims bear the burden of proof. In civil cases, the victim must bear the initial burden of proof of proving beyond a preponderance of the evidence that she was sexually abused and the individual and/or institution were responsible. Without corroborating evidence, the case does not go forward. Institutions have been more than willing to play hardball with victims across the United States so that even strong evidence can be insufficient in some cases.

Civil SOL reform exists to shift the cost of the abuse from the victim to the ones who caused it. Short SOLs for child sex abuse mean that the victims must bear the cost of the abuse and the perpetrators and institutions that let the abuse happen are immunized from liability for their wrongdoing.

Child sex abuse is perpetrated across the culture and not just in the gymnastic community. Child sex abuse is an epidemic in the United States and is not limited to elite gymnastics or Dr. Larry Nassar. The

institutions lobbying against civil SOL are not lobbying because there is no problem. They are lobbying in all likelihood because they know they have endangered children by hiding child predators.

Settlements typically are paid—at least in part--by insurance coverage. Insurance companies often contest coverage of child sex abuse (just as they contest coverage wherever they might have liability) but in the large settlements across the country, typically insurance covers half or more of the recovery. Insurers have been collecting premiums for decades and avoiding paying on the claims.

No institution has been forced into involuntary bankruptcy by SOL reform. The attempt to equate victims' access to justice with institutional bankruptcy is disingenuous. The only bankruptcies following disclosure by child sex abuse victims of institutional negligence have been voluntary bankruptcies intended to protect assets from the victims. There is no cause and effect relationship between such bankruptcies. Some Catholic diocesan bankruptcies have occurred without SOL reform, e.g., Portland, Oregon, and Spokane, Washington. Following the California window, the Los Angeles Archdiocese did not enter bankruptcy despite civil lawsuits. The San Diego diocese attempted voluntary bankruptcy but was thrown out of federal court due to its many landholdings.

No other Catholic Conference has lobbied against the extension of criminal SOLs. The MCC has shockingly lobbied against criminal SOL extensions. Since criminal SOLs cannot be retroactive, in effect the MCC is conceding that it is harboring perpetrators currently operating. Why else would it be concerned about extending the criminal SOLs. In fact, in New York, while the Catholic Conference has lobbied against the window, it has endorsed complete elimination of the criminal and civil SOLs going forward. The MCC's objection to the forward extensions is a strong argument that it is in need of the deterrence that SOL reform provides.

Most child sex abuse is not prosecuted and, therefore, civil lawsuits are necessary to name perpetrators and institutions that provide cover for pedophiles. Prosecutors do not prosecute sex crimes unless they have evidence beyond a reasonable doubt. Due to the capacity of the perpetrator to intimidate the victim, the effect of trauma, and the dependency of the victim on the perpetrator, there is typically a lengthy delay before the victim can come forward. As a result, it is unlikely there is physical evidence. That makes prosecution difficult. The failure to prosecute does not mean the sex abuse didn't happen, however, and should be irrelevant to whether a civil case can go forward.