

**TO:** The Honorable Alan Clark, Chair, The Honorable Stephanie Flowers, Vice-Chair, and Honorable Members of the Senate Judiciary Committee

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

**RE:** Arkansas SB 676, the “Justice for Vulnerable Victims of Sexual Abuse Act”

**DATE:** April 14, 2021

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Dear Chair, Vice-Chair, and Members of the Senate Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAdvocacy, to submit testimony regarding SB 676, which will increase access to justice for victims of childhood sexual abuse and enhance protection for children in Arkansas. If passed, this legislation will make Arkansas a leader in the fight to protect children’s rights.

By way of introduction, Marci Hamilton is the Founder & CEO 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.

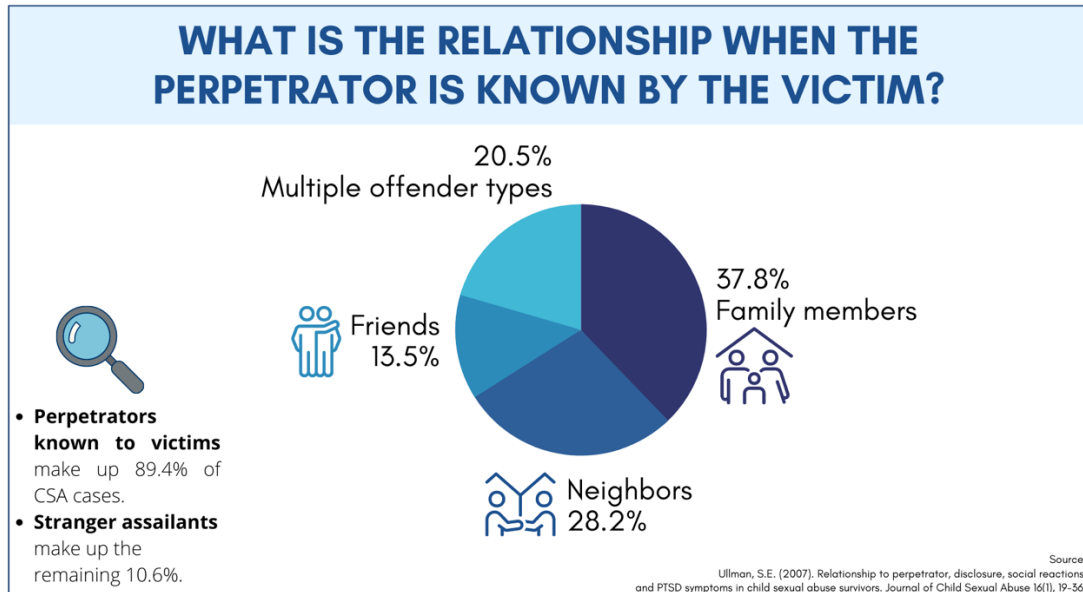
CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of statute of limitations, or “SOL” reform, and the only organization to track child sex abuse SOLs in every U.S. state, territory, and the federal government.

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 sex abuse.

We commend you and the Committee for taking up SB 676, which will make Arkansas a safer place for children and disabled individuals and give victims of sex abuse more time to access justice. SB 676 will extend the current SOL for child sex abuse, which bars claims after a victim reaches age 21, to age 55 instead. It would also open a 2-year revival window for expired claims, which will allow past victims of child sex abuse to come forward and pursue civil justice while the window is open. The SOL extension and window provisions also apply to help disabled children and adults who are particularly vulnerable to being sexually abused.

## 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> Child sexual is a social issue that occurs in all social groups and institutions -- families, religious groups, youth-serving organizations, athletic institutions, etc. -- and it affects everybody involved in these groups. And, importantly, these groups are not mutually exclusive. Individuals always inhabit multiple roles, simultaneously belonging to multiple social groups. The overwhelming majority of perpetrators of child sex abuse are someone the child knows and most abuse occurs in the family setting.



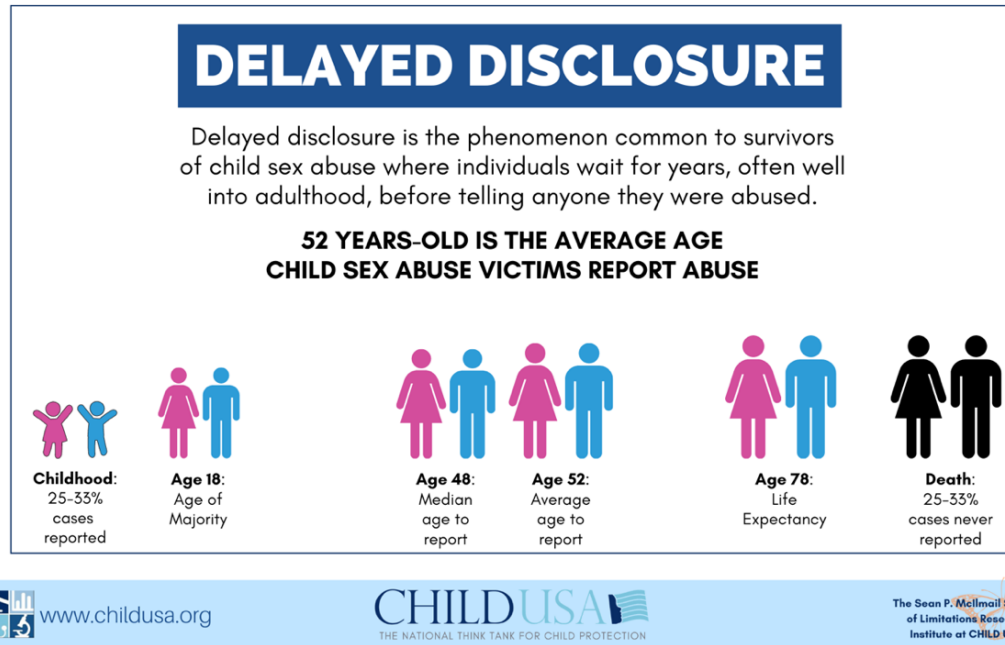
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The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.<sup>ii</sup> It is 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 disclose their abuse to anyone.<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 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 Arkansas who are preying on one child after another because the existing SOLs provide that opportunity. By extending the SOL and opening a window, access to justice for past victims will be available; this will also greatly reduce the present danger to the children of Arkansas.

**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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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. By allowing claims for past abuse to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. This is especially important because predators have many victims and abuse into their elderly years. As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. 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 today to grow into healthy adults.

SOL reform also educates the public about the danger of child sexual abuse and how to prevent it. 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 encouraging institutions to implement accountability and safe practices.

The costs of sex abuse are staggering. Child sex abuse generates many costs that impact the nation's health care, education, criminal justice, and welfare systems, costing nearly \$2 trillion annually. Numerous, scholarly studies have concluded that the average cost of child maltreatment is approximately \$830,928 per victim.<sup>viii</sup> It is unfair for the victims, their families, and Arkansas taxpayers to be the only ones who bear this burden; SB 676 levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers. Further, if this revival window is passed, **Arkansas will gain millions of dollars in revenue from Medicaid reimbursements** from settlement funds and damages awards survivors recover.

### **III. Arkansas 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**

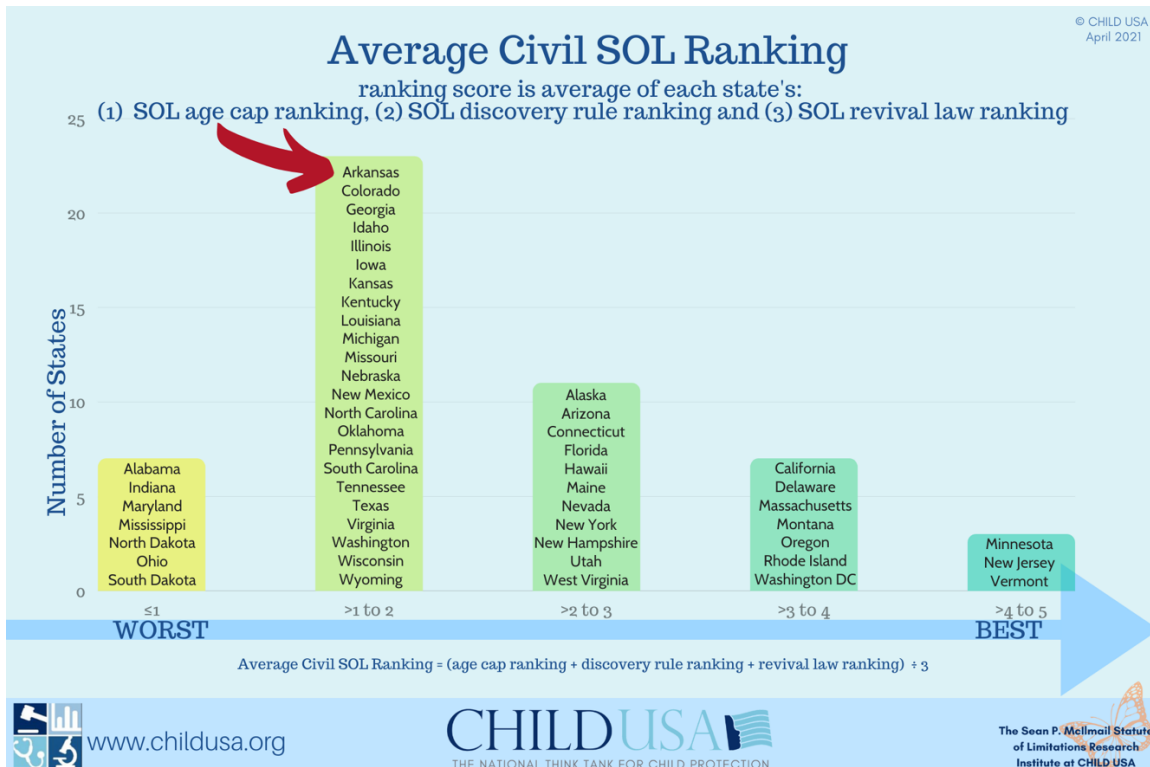
There is a vibrant national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement since 2002, see CHILD USA's Report: History of US SOL Reform: 2002-2020.<sup>ix</sup> 2019 was 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>x</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>xi</sup>

By April of 2021, 31 states, including Arkansas, have introduced SOL reform bills for child sex abuse. Arizona and Kentucky already have new SOL laws going into effect, including a revival law in Kentucky. This year, Arkansas is one of 25 states trying to extend or eliminate civil SOLs and one of 20 states seeking to revive civil claims for past child sex abuse.<sup>xii</sup>

There has been incredible progress across the nation, yet Arkansas has not made any changes to its short civil SOLs for child sex abuse since 1993. In the United States, since 2002, 40 jurisdictions extended or eliminated their civil SOLs for child sex abuse and 21 jurisdictions revived expired claims. It's time for Arkansas to join the movement. This bill is an opportunity for the state to reach the top - for the children of yesterday, today and tomorrow.



The following graphic demonstrates how Arkansas ranks amongst other states regarding its current civil SOL for child sex abuse. CHILD USA's average ranking of each state's civil SOL takes into account each state's age cap, discovery rule, and revival law. On a scale of 0-5, overall, Arkansas currently ranks as a 1.33, making it below average amongst the states, and in need of improvement.

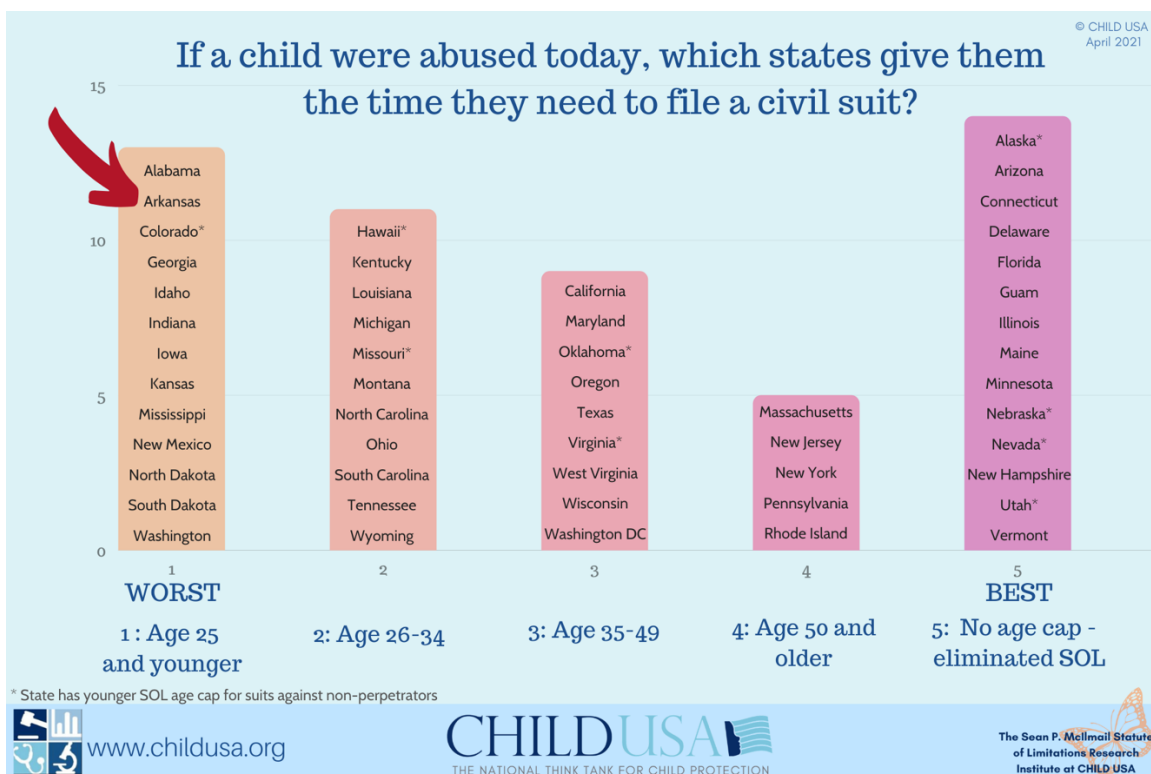




### a. Arkansas Should Extend Its Civil SOL for Child Sex Abuse

In Arkansas, the civil SOL for claims for child sex abuse is age 21 or 3 years after discovery. This means the civil SOL expires more than *three decades* before the average victim will tell anyone they were abused.

The following graphic demonstrates how Arkansas ranks amongst other states regarding its current age cap for civil child sex abuse claims. Currently, forty-three states have longer SOLs than Arkansas, which is ranked as one of the worst states. Overall, 12 states and Guam have eliminated some civil SOLs for child sex abuse and they are ranked below as the best.<sup>xiii</sup> Another 5 states have extended civil SOLs past 50 years of age.<sup>xiv</sup> Arkansas ranks as the worst because of its short and out-of-date SOL for child sex abuse.



Extending the SOL to age 55 would be a significant improvement for Arkansas. The extension to age 55 is in line with the recent trend to eliminate civil SOLs and give victims into their 50's time to come forward in accordance with the delayed disclosure of abuse science.

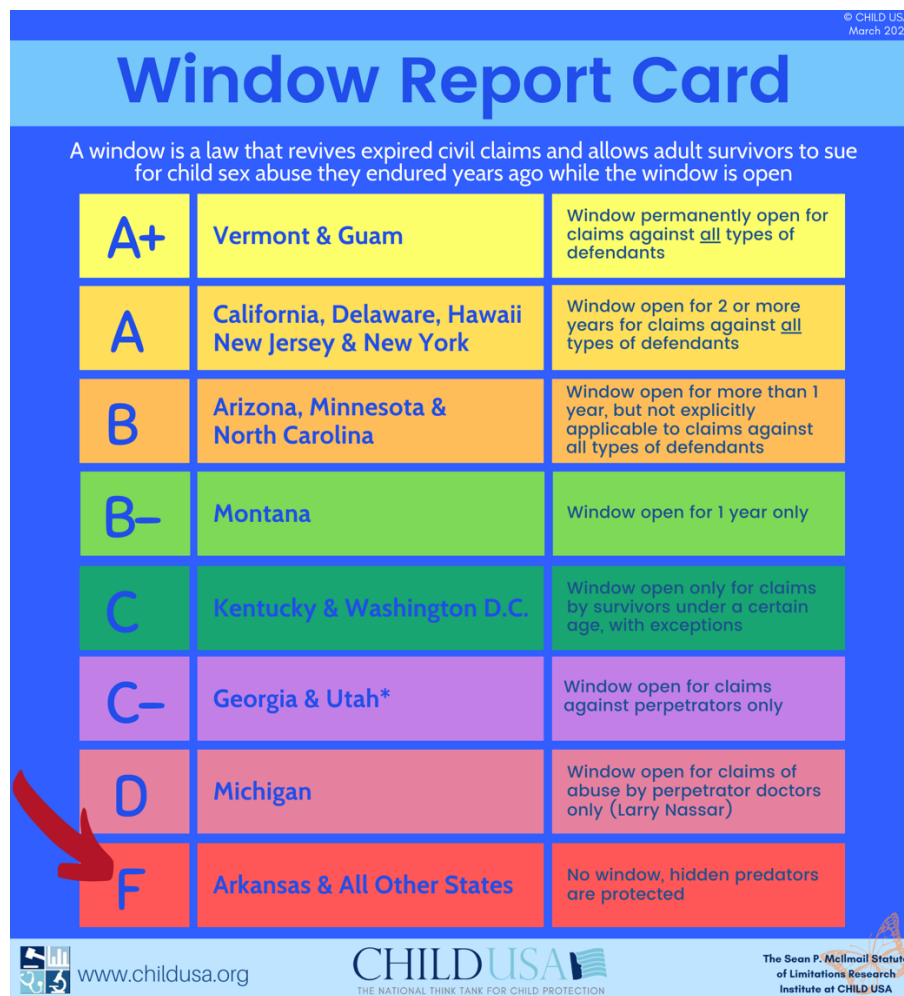
### b. Arkansas Should Open a Revival Window for Child Sex Abuse Claims

Revival laws recognize that society for too long did not understand the plight of those sexually abused as children and unfairly extinguished their rights long before they had the ability to report or seek justice for their abuse. Revival laws are the only way to restore justice to adult victims of child sex abuse and give them the opportunity to file civil lawsuits if they so choose. These laws are not solely about justice for victims; there are also important public safety reasons for allowing older claims of abuse to proceed. When victims are empowered to disclose their abuse and sue for

their injuries, the public benefits from finding out who the perpetrators are, the cost of abuse is shifted to those who created it and it learns how to prevent child sex abuse.

There are already 19 states, Washington D.C. and Guam that have revival laws for child sex abuse claims, including 16 with revival windows.<sup>xv</sup> Revival windows are the most popular means of reviving for states. A window is a law that eliminates the civil SOL for a set period of time after the law takes effect for victims whose claims have already expired.

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. Vermont and Guam's permanently open revival windows rank the highest. The next best windows are those in California, Delaware, Hawaii, New Jersey and New York, and this legislation would place Arkansas alongside these leaders.



The 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,<sup>xvi</sup> but provide long-overdue justice to older victims of child sex abuse.



They also address the systemic issue of institutional child sex abuse, which occurs with alarming frequency in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen and for looking the other way or covering up abuse when it's reported, the **children these institutions serve remain at risk today**. This bill will incentivize youth serving organizations to implement prevention policies and take action immediately to report abuse in real time. A revival window sends a strong message to youth serving organizations in Arkansas 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.

#### IV. Conclusion

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. Arkansas'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 Arkansas'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> See *supra* n. iv.
- <sup>viii</sup> M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).
- <sup>ix</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>x</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>xi</sup> See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).
- <sup>xii</sup> See *2021 SOL Tracker*, CHILDUSA.ORG (last visited Apr. 5, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).
- <sup>xiii</sup> AZ, 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 Apr. 5, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).
- <sup>xiv</sup> MA, NJ, NY, PA, & RI. See *id.*
- <sup>xv</sup> 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](http://www.childusa.org/law).
- <sup>xvi</sup> See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Apr. 5, 2021), available at [www.childusa.org/law](http://www.childusa.org/law).