

TO: Distinguished Members of the Congressional Bipartisan Task Force to End Sexual Violence

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Professor, University of Pennsylvania

RE: SOL Reform & Access to Justice for Victims of Child Sexual Abuse

DATE: May 7, 2021

Dear Distinguished Members of the Congressional Bipartisan Task Force to End Sexual Violence,

Thank you for allowing me to participate as a panelist in today's roundtable discussion on how Congress can help address the epidemic of child sexual abuse and increase access to justice for victims of the same.

By way of introduction, my name is Marci Hamilton, and I am 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 I am a Professor in the Fels Institute of Government and a Senior Resident Fellow in the Program for Research on Religion. I am also 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 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 reform, and the only organization to track child sex abuse SOLs in every U.S. state, territory, and the federal government.

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.^[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] 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 many as 33%, never tell anyone they were abused.^[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 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 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 who are preying on one child after another because the existing SOLs provide that opportunity. By extending SOLs and opening windows, past victims will finally be able to access justice and the present danger to children greatly reduced.

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.

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 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 public learns 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. 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.^[8] It is unfair for the victims, their families, and taxpayers to be the only ones who bear this burden; revival laws level the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers.

III. Revival Windows Are an Important Trend Toward Meaningful SOL Reform

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 20 states, Washington D.C. and Guam that have revival laws for child sex abuse claims, including 16 with revival windows.^[9] 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 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,^[10] but provide long-overdue justice to adult 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. A revival window sends a strong message to these institutions that that the state will not tolerate or look the other way when a person sexually assaults a child in their midst.

IV. Nationwide SOL Reform Since 2002

Before 2002, there was a trickle of information regarding child sexual abuse which mostly focused on individual perpetrators and victims, leading the public to believe that child sex abuse was relatively uncommon and a problem related solely to individual perpetrators, as opposed to an institutional or society-wide problem. That changed in 2002 with the publishing of the *Boston Globe's* groundbreaking Spotlight series on the cover up of clergy abuse in the Boston Archdiocese.^[11] After the series broke, the pace of disclosure by sex abuse victims and the identification of responsible individuals and institutions increased significantly. It also marked a turning point in the history of child protection as the public finally saw the outlines of a paradigm of sex abuse in trusted institutions. The Spotlight series brought to the fore the broad themes of institution-based child sex abuse: powerful men motivated by image and self-preservation; calculated ignorance of the clear risks to children; and protection of the abusers within the institution rather than the children.

The pace of legal reform has increased significantly since 2002. As more and more victims began to come forward and institution-based child sex abuse scandals came to light, states grappled with the challenge of creating justice for the victims whose claims had expired. One of the ways states sought to address this injustice was to create revival legislation that would enable claims already time barred to be brought in court.

The result has been a vibrant national and global movement for SOL reform. Most states and the federal government have made access to justice, or SOL reform, a priority. Forty-eight states and the District of Columbia, or 96%, have amended their child sex abuse SOLs since January 2002.^[12] Many jurisdictions amended their SOLs more than once.^[13] In the United States, since 2002, 44 jurisdictions extended or eliminated their civil SOLs for child sex abuse and 21 jurisdictions revived expired claims.^[14] In the past two years alone there has been a surge in SOL reform. 23 states and Washington D.C. changed their SOLs for the better in 2019.^[15] 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.^[16]

Yet, with all the activity in the states since 2002, only one state, Vermont, and the U.S. territory of Guam have reached the pinnacle of SOL reform, which is to simply eliminate the criminal SOL going forward and the civil SOLs backwards and forwards.

V. The Pace of SOL Reform Will Continue Throughout 2021

As of May 1, 2021, 32 states have introduced SOL reform bills for child sex abuse. Three states already have new SOL laws going into effect this year, including a revival law in Kentucky and Arkansas, and civil SOL elimination laws in Arizona and Colorado. This year, there are 25 states trying to extend or eliminate civil SOLs and 20 states seeking to revive civil claims for past child sex abuse.^[17]

The time has also come for change at the federal level. A bill that seeks to amend the Child Abuse Protection and Treatment Act to incentivize States to eliminate civil and criminal statutes of limitations and revive time-barred civil claims for child abuse cases, among other things, will be introduced in congress later this year. Allocation of funds made available to eligible states will be tied directly to the number of reforms being sought. This bill is an opportunity for every state to reach the top—for the children of yesterday, today, and tomorrow.

VI. Title IX Regulations Must Set A Federal Standard That Guarantees Survivors Access to Justice

Our college students need SOL reform as much as our children. We send our kids off to college with high hopes and some trepidation. They are young, and college should be a time of exploring ideas, finding their mission in life, and meeting friends they never would have met otherwise. They are not just chronologically young, but as the science shows, their brains are still developing the capacity to make executive decisions until their mid-20s.^[18]

There is a tragic epidemic of sexual assault on our college and university campuses. Studies suggest that nearly 1 in 10 students have been the target of sexual misconduct by a school employee, but because of the trauma victims experience, most do not report the abuse until it is too late. Some states give victims as little as two years after the offense occurred to file a claim despite an abundance of data showing that trauma, humiliation, and embarrassment typically silence the victim longer than a few years, and so justice is denied, and the public is kept in the dark about the dangers on our campuses.

Those brave enough to come forward face a cumbersome legal system that actively works against them, marred by outdated, patchwork state laws with prohibitive statutes of limitations. Even for victims on college campuses subject to federal Title IX requirements, their claims against universities and schools—even those who are known to have been complicit in covering up abuse or who actively discouraged survivors from speaking out—are governed by states' statutes of limitations. This creates vastly different access to justice based solely on geography, defying the most basic principles of our legal system.

This dramatic disparity is reflected around the country. By way of example, survivors of abuse at Ohio State University have been prevented from seeking justice under state causes of action or Title IX by narrow statutes of limitations, even though survivors of abuse in other states, like California which recently updated its laws governing the statute of limitations for civil sex abuse lawsuits, don't encounter the same barriers.^[19]

In March, University of Southern California announced \$1.1 billion in settlements to the survivors of a campus doctor who preyed on hundreds of his patients over the course of several decades.^[20]

This sum, one of the largest in a sexual abuse case brought against a university, will allow individual plaintiffs to receive amounts reaching into the millions. But compare that with Ohio State University, which announced a similar settlement last year with 162 plaintiffs but for only \$41 million total—or a maximum of \$253K per victim.^[21] This total represents just 17% of what Larry Nassar survivors received in the case against Michigan State University. This is a tragic denial of justice considering the lifetime cost of abuse to the victims.

Justice must be available to all abuse survivors, regardless of geographic boundaries. Federal lawmakers can advance this goal by incentivizing states to increase access to justice and by preempting the state SOLs by amending the Title IX regulations to set a federal standard that guarantees survivors the right to come forward when they are ready and able. Federal lawmakers must level the playing field for victims across the country so that access to justice is the same for every victim and survivors have the right to come forward when they are ready to do so.

VII. Amendments to the Federal Bankruptcy Code & RICO Can Ensure Justice for All Survivors & Reduce the Re-traumatization of Victims Caused by Federal Laws

There are two other issues CHILD USA is deeply concerned about: (1) the federal bankruptcy law that is retraumatizing victims who are forced into Chapter 11 bankruptcy proceedings; and (2) RICO's failure to apply to cases of widespread child sex abuse coverups and ongoing endangerment of children.

Many youth-serving organizations such as the Catholic Church, Boy Scouts of America, USA Gymnastics, and others have remained complicit in sexual assault of children by maintaining policies that fail to deter abuse and sweep assault under the rug. Many of these institutions have sought sanctuary in the federal bankruptcy system to limit their liability when their tortious conduct has invited tort claims, to avoid in-depth discovery regarding their bad acts, and to force victims to come forward before their claims have expired under state law and they are psychologically prepared to do so.

Permitting this practice to continue not only protects negligent organizations, but it also usurps a historically state-held power and permits a federal system to curtail efforts to make responsible institutions accountable by setting bankruptcy bar dates without reference to the relevant state SOLs. Those dates are too often solely for the benefit of the organization and they short-circuit the justice that the state intended for the victim. To ensure victims access to justice, debt or other financial liability incurred as a result of sexual assault of a child must be exempt from the bankruptcy code.

Another way Congress can empower victims and hold institutions accountable is by amending RICO to expand its application to include organizations that have perpetuated child sexual abuse, exploitation, or trafficking. RICO provides criminal penalties and civil causes of action for wrongful conduct by organizations, closing a loophole to hold accountable those who have ordered or assisted others in causing harm. Child sexual abuse is a heinous crime and the organizations responsible for perpetuating these harms must be held accountable.

VI. Conclusion

Children deserve the passage of statutes of limitations reform to protect them today and in the future, and to achieve justice for the many victims still suffering in silence. Victims have been locked out of the courthouse again and again by unfairly short limitations periods, to the benefit of perpetrators and the institutions that enabled them. This moment is an opportunity for our lawmakers to recognize and correct the persistent, abhorrent blind spots in our laws and protect survivors.

Please do not hesitate to contact me if you have questions regarding SOL reform or if I can be of assistance in any other way.

Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal line extending to the right.

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^[1] CHILD USA, *An Update on the Prevalence of Child Sexual Abuse*, CHILDUSA.ORG (last visited, May 1, 2021), available at <https://childusa.org/blog-csa-prevalence/>; see also 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/whycant-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/rppr/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>.

^[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-DisclosureFactsheet-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] See *supra* n 4.

^[8] CHILD USA, *What's the cost of child sex abuse?*, CHILDUSA.ORG (last visited March 3, 2021), available at https://childusa.org/wp-content/uploads/2020/05/Copy-of-Whats-the-cost-Of-child-sex-abuse_-2-2-pdf.jpg; see also M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).

^[9] 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.

^[10] See CHILD USA, *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.

^[11] Michael Rezendes, *Church Allowed Abuse by Priest for Years*, THE BOSTON GLOBE: SPOTLIGHT SERIES (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTtAT25qKGvBuDNM/story.html>; see also <http://www.bostonglobe.com/arts/movies/spotlight-movie>.

^[12] The only states to make no improvements to child sex abuse SOLs since 2002 are South Carolina and Wyoming.

^[13] E.g., on the civil side, Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia and Washington D.C., and on the criminal side, the following states amended the criminal SOL more than once: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin and Washington D.C..

^[14] CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Feb. 10, 2021), available at www.childusa.org/sol-report-2020.

^[15] 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.

^[16] See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2020sol.

^[17] See *2021 SOL Tracker*, CHILDUSA.ORG (last visited Apr. 5, 2021), available at www.childusa.org/2021sol.

^[18] Farrington, et. al., *Young Adult Offenders: The Need for More Effective Legislative Options and Justice Processing*, 11(4) CRIMINAL & PUBLIC POLICY 593 (2012).

^[19] Marci A. Hamilton, *How to help victims of sexual abuse get justice: Eliminate statute of limitations*, USATODAY.COM (May 6, 2021), available at <https://www.usatoday.com/story/opinion/2021/05/03/how-congress-can-help-victims-sexual-abuse-get-justice-column/4869602001/f>.

^[20] Shawn Hubler, et. al., *U.S.C. Agrees to Pay \$1.1 Billion to Patients of Gynecologist Accused of Abuse*, NYTIMES.COM (Mar. 25, 2021), available at <https://www.nytimes.com/2021/03/25/us/usc-settlement-george-tyndall.html>.

^[21] Rebekah Riess & Susannah Cullinane, *Ohio State University will pay \$41 million to settle lawsuits over doctor's abuse*, CNN.COM (May 8, 2020), available at <https://www.cnn.com/2020/05/08/us/osu-strauss-abuse-settlement/index.html>.