

Memorandum of Support for the Adult Survivors Act (A.648/S.66)

Thank you for allowing us to provide this memorandum of support regarding the Adult Survivors Act, which would revive the expired civil statutes of limitations for those who have been sexually assaulted when they were age 18 and over. This “window” of opportunity for justice would be open for 1 year and it is a much-needed law to supplement the highly successful Child Victims Act, which created a window for victims up to age 17.

By way of introduction, Professor Marci Hamilton is the Founder and 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. She is the leading expert on the history and constitutionality of SOL reform. She advocated for the New York Child Victims Act from its inception for 16 years, until it passed.

CHILD USA is the leading 501(c)(3) 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. CHILD USA Advocacy is a 501(c)(4) advocacy organization that carries forward the policies devised by CHILD USA.

Kathryn Robb is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children’s civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy 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 who advocated for the passage of the Child Victims Act for 12 years.

I. SOLs are Based on the Age of Majority, A Legal Line Designating the End of “Childhood” that Does Not Reflect the Scientific Reality of Brain Development

SOLs are arbitrary rules that set the deadline for pressing criminal charges or filing a civil lawsuit, and they are more lenient for victims under age 18 in cases of sexual assault. Like many states, New York defines age 18 as the legal end of childhood,ⁱ but this arbitrary cut-off does not reflect the scientific reality of brain development and the impact of trauma.

In fact, the brain does not fully develop its executive function before age 25.ⁱⁱ This means that trauma impacts the brain of a 25 year-old in the same way it impacts the brain of a 17 year-old.ⁱⁱⁱ Trauma has devastating impacts on the brain, in ways that lead to delayed disclosure of abuse.^{iv} Although most states define “adulthood” as age 18, the legal designation misleads the public into a false understanding of how developed an individual’s brain is once they reach legal adulthood, and therefore how capable they are of articulating and overcoming a traumatic experience.

II. The Child Victims Act Only Benefits Victims Up to Age 17

While the Child Victims Act^v has provided a pathway to justice for over 5,400 individuals in the state of New York who were sexually abused under age 18,^{vi} many victims of known perpetrators have come forward during the CVA window only to be told they just missed the age cut off.^{vii} This means that those who were victimized in their late teens and early twenties remain silenced.^{viii} 80% of rape victims are under 25,^{ix} which means that by enforcing a stricter SOL for victims over the age of 18 years, New York has prevented a majority of victims from obtaining justice and naming their perpetrators publicly.

III. The Adult Survivors Act is an Important Next Step in SOL Reform for Sex Assault Victims in New York

Therefore, we support the Adult Survivors Act. New York should join the growing list of states that recognize the injustice of short SOLs for adult survivors of sexual assault to revive expired claims.^x

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^{xi} is shifted to those who created it^{xii} and it learns how to prevent child sex abuse. This also sends a strong message to perpetrators and organizations in New York that the State will not tolerate sexual crime. By creating a lookback window for adult survivors of sexual assault, access to justice for past victims will be available; and this will also greatly reduce the present danger to the people of New York. Thank you for your consideration.

Sincerely,



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ⁱ See N.Y. C.P.L.R. 105(j).

ⁱⁱ M. Arain, et al., *Maturation of the adolescent brain*, 9 NEUROPSYCHIATR. DIS. TREAT. 449-461 (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/#:~:text=The%20development%20and%20maturation%2>

Of the prefrontal cortex occurs primarily, helps accomplish executive brain functions.

ⁱⁱⁱ B. McEwen, *Physiology and neurobiology of stress and adaptation: central role of the brain*, 87(3) *PHYSIOL. REV.* 873-904 (Jul. 2007), available at <https://pubmed.ncbi.nlm.nih.gov/17615391/>.

^{iv} 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>.

^v N.Y. C.P.L.R. § 213-c.

^{vi} For an analysis of the SOL reform movement since 2002, see CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited March 8, 2021), available at www.childusa.org/sol-report-2020.

^{vii} Jesse McKinley, *'I Want to be Heard': Adult Sex-Abuse Victims Demand New Rights*, NEW YORK TIMES (Oct. 25, 2019), available at <https://www.nytimes.com/2019/10/25/nyregion/sexual-abuse-lawsuit-adult-ny.html>; Brad Hoylman, *Senator Brad Holyman Introduces "Adult Survivors Act" To Allow Adult Victims of Sex Crimes To Seek Justice*, NYSENATE.GOV (Oct. 25, 2019), available at <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/senator-brad-hoylman-introduces-adult-survivors-act-allow-adult>.

^{viii} Erin Donaghue, *New Jeffrey Epstein accusers push for protections for adult sex abuse survivors*, CBS NEWS (Dec. 20, 2019), available at <https://www.cbsnews.com/news/jeffrey-epstein-new-sexual-harassment-accusers-push-new-law-giving-protections-for-adult-sex-abuse-survivors/>.

^{ix} *Sexual Violence*, Office for Victims of Crime (last visited May 13, 2021), available at https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/helpseries/HelpBrochure_SexualViolence.html.

^x Michigan: MICH. COMP. LAWS ANN. § 600.5805; California: CAL. CIV. PROC. CODE § 340.16 (3)(c); New Jersey: N.J. STAT. ANN. §2A:14-2a; Colorado: SB 73, 73rd Gen. Assemb., Reg. Sess. (Colo. 2021); Delaware: HB 6, 151st Gen. Assemb., Reg. Sess. (Del. 2021).

^{xi} 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 \$830,928.00 per victim. M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).

^{xii} The State is also entitled to a portion of the settlement or award funds and benefits from an automatic "Medicaid lien" that is placed on the funds for the payments it made for the survivors' health problems caused by the abuse. See N.Y.S. S.S.L. §§ 104; 104(b). This bill would result in millions of dollars in reimbursement of Medicaid funds previously paid to victims of sexual assault.