

Overview of Constitutional Challenges to Revival Windows for Child Sexual Abuse Statutes of Limitations

Revival of civil statutes of limitations (SOL) for child sexual abuse is constitutional in Pennsylvania. All that is required is the **legislature’s clear intent to revive**ⁱ because altering the statute of limitations is a **procedural** change, not a substantive one.ⁱⁱ Therefore, defendants in Pennsylvania have **no absolute right to a statute of limitations defense**. “[T]here is no such thing as a vested right to do wrong.”ⁱⁱⁱ The Pennsylvania **Remedies Clause protects those “injured,” not those who caused the injury**, and it is similar to the Remedies Clause of 39 other states, a majority of which have not found any defect with civil revival.

Although the specific issue of constitutionality of child sexual abuse windows under the Pennsylvania Remedies Clause has not been addressed in Pennsylvania, lawmakers should leave that determination to the courts if the issue arises.

No state with a statutory child sexual abuse revival window and a Remedies Clause has invalidated the revival window under the Remedies Clause. 4 states with a Remedies Clause have invalidated a child sexual abuse revival law, but only based on case precedent, Due Process, or a finding that the law is retrospective. 5 states with a Remedies Clause have found their child sexual abuse revival law constitutional based on Due Process, and in Connecticut in part based on the Remedies Clause. 6 states with Remedies Clauses in their constitution have revived child sexual abuse claims, without challenge. They are **Arizona**,^{iv} **Kentucky**,^v **Montana**,^{vi} **Oregon**,^{vii} **Vermont**,^{viii} and **West Virginia**.^{ix} Michigan,^x D.C.,^{xi} and Guam^{xii} have revived child sexual abuse claims without challenge, and they do not have a Remedies Clause. For more information, reference the table below.

State with Challenge	Type of Revival	Remedies Clause	Upheld as Constitutional?	What Constitutional Grounds?
California	Window	none	Yes ^{xiii}	Due Process
Connecticut	Age Limit Revival	CONN. CONST. art. I, § 10	Yes ^{xiv}	Due Process/Remedies
Delaware	Window	DEL. CONST. art. I, § 9	Yes ^{xv}	Due Process
Florida	Window	FLA. CONST. art. I, § 21	No ^{xvi}	Due Process
Georgia	Window	none	Not Yet Decided ^{xvii}	
Hawaii	Window	none	Yes ^{xviii}	Due Process
Massachusetts	Age Limit Revival	MASS. CONST. pt. I, art. 11	Yes ^{xix}	Due Process



Minnesota	Window	MINN. CONST. art. 1 § 8	Yes ^{xx}	Due Process & Special Legislation
Missouri	Age Limit Revival	MO. CONST. art. I, § 14	No ^{xxi}	Retrospective
New Jersey	Window & Age Limit Revival	none	Yes ^{xxii}	Due Process
New York	Window	none	Yes ^{xxiii}	Due Process
North Carolina	Window	N.C. CONST. art. I, § 18	Not Yet Decided ^{xxiv}	
South Carolina	Age Limit Revival	S.C. CONST. art. I, § 9	No ^{xxv}	Due Process
Utah	Window	UTAH CONST. art. I, § 11	No ^{xxvi}	Due Process
Virginia	Window	none	No ^{xxvii} then Yes ^{xxviii}	Due Process violation, but amended Constitution to allow for revival

ⁱ *Republic of Austria v. Altmann*, 541 U.S. 677, 692-93 (2004); *Landgraf v. USI Film Productions*, 511 U.S. 244, 267-68 (1994).

ⁱⁱ *Bible v. Dep't of Labor & Indus.*, 548 Pa. 247, 696 A.2d 1149 (Pa. 1997); *McDonald v. Redevelopment Authority*, 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); *Commonw. v. Johnson*, 732 A.2d 639, 643 (Pa. Super. Ct. 1999).

ⁱⁱⁱ *Landgraf*, 511 U.S. at 297 (quoting *Freeborn v. Smith*, 69 U.S. 160 (1865)).

^{iv} ARIZ. CONST. art. II, § 11 (Remedies Clause); AZ ST § 12-514 (2019 window).

^v KY. CONST. § 14 (Remedies Clause); HB 472, Gen. Assemb., 2021 Reg. Sess. (Ky. 2021) (window).

^{vi} MONT. CONST. art. II (Remedies Clause); MCA § 27-2-216 (2019 window).

^{vii} OR. CONST. art. I, § 10 (Remedies Clause); ORS 12.117 (revival through new age cap); *See Doe v. Silverman*, 287 Or. App. 247, 253, 401 P.3d 793, 797 (2017), review denied, 362 Or. 389, 411 P.3d 382 (2018) (Held the current statute of limitation revives claims that would have previously expired, based on statutory construction and legislative intent, but does not address constitutionality).

^{viii} VT. CONST. ch. I, art. 4 (Remedies Clause); VT. STAT. ANN. tit 12, § 522 (2019 window).

^{ix} W. VA. CONST. art. III, § 17 (Remedies Clause); W. VA. CODE ANN. §§ 55-2-15 (revival through new age cap).

^x MI ST 600.5851b (2018 window).

^{xi} D.C. CODE § 12-301 (2019 window).

^{xii} 7 G.C.A. § 11301.1 (2016 window). Guam does not have a constitution.

^{xiii} *Deutsch v. Masonic Homes of Cal., Inc.*, 164 Cal.App.4th 748, 752, 759, 80 Cal.Rptr.3d 368 (Cal.Ct.App.2008); *Liebig v. Superior Court*, 209 Cal. App. 3d 828, 830, 257 Cal. Rptr. 574, 574 (Ct. App. 1989).

^{xiv} *Doe v. Hartford Roman Catholic Diocesan Corp.*, 317 Conn. 357, 406 (Conn. 2015).

^{xv} *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1258-60 (Del. 2011); *Whitwell v. Archmere Acad., Inc.*, No. CIV.A.07C08006RBY, 2008 WL 1735370, at *2 (Del. Super. Ct. Apr. 16, 2008).

^{xvi} *Wiley v. Roof*, 641 So. 2d 66, 69 (Fla. 1994).

^{xvii} The Georgia Supreme Court granted interlocutory appeal in *Crea v. Krzyzanski*, No. 1:18-CV-0861-SCJ, 2019 WL 1499471, at *3 (N.D. Ga. Feb. 6, 2019). A decision has not yet been rendered.

^{xviii} *Roe v. Ram*, No. CIV. 14-00027 LEK-RL, 2014 WL 4276647, at *9 (D. Haw. Aug. 29, 2014) (citing *Roe v. Doe*, 59 Haw. 259, 581 P.2d 310 (1978)).

^{xix} *Sliney v. Previte*, 41 N.E.3d 732, 737, 739 (Mass. 2015).

^{xx} *K.E. v. Hoffman*, 452 N.W.2d 509, 513-14 (Minn. Ct. App. 1990).

^{xxi} *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 340 (Mo. 1993).

^{xxii} *T.M. v. Order of St. Benedict of New Jersey, Inc.*, MRS-L-399-17 (Law Div., Morris Cty. May 22, 2020).

^{xxiii} *S.T. v. Diocese of Rockville Centre*, Index No. 099997/2019 (N.Y. Sup. Ct. Nassau Cty. July 30, 2020), Order of Hon. Steven M. Jaeger, p.8, available at <https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=LfZbSRksZ9wr7dJadIeQXA==>; *Torrey v. Portville Cent. Sch.*, 66 Misc. 3d 1225(A) (N.Y. Sup. Ct. 2020); *Giuffre v. Dershowitz*, No. 19 CIV. 3377 (LAP), 2020 WL 2123214, at *2 (S.D.N.Y. Apr. 8, 2020).

^{xxiv} In North Carolina, a constitutional challenge was accepted by a three-judge panel in *Cryan v. YMCA*, No. COA 20-696, 2021 WL 197287 (N.C.App.). A decision has not yet been rendered.

^{xxv} *Doe v. Crooks*, 364 S.C. 349, 351–52, 613 S.E.2d 536, 538 (2005).

^{xxvi} *Mitchell v. Roberts*, ---P.3d---, 2020 WL 3118607, *2 (Utah 2020).

^{xxvii} *Starnes v. Cayouette*, 244 Va. 202, 212, 419 S.E.2d 669, 675 (1992).

^{xxviii} *Kopalchick v. Cath. Diocese of Richmond*, 274 Va. 332, 337, 645 S.E.2d 439 (Va. 2007).