



TO: Representative Steven Johnson, Chair, Representatives Pat Outman and Julie Brixie, Vice Chairs, and Honorable Members of the House Oversight Committee

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

RE: HB 4306: statute of limitations for criminal sexual conduct
HB 4307: governmental immunity for criminal sexual conduct

DATE: September 28, 2021

Dear Chair Johnson, Vice Chairs Outman and Brixie, and members of the House Oversight Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USA Advocacy, to submit testimony regarding HB 4306 and HB 4307, which will increase access to justice for victims of child sexual abuse and enhance protection for children in Michigan. If passed, this legislation will bring Michigan closer to being a leader in the fight to protect children.

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 premier 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 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.

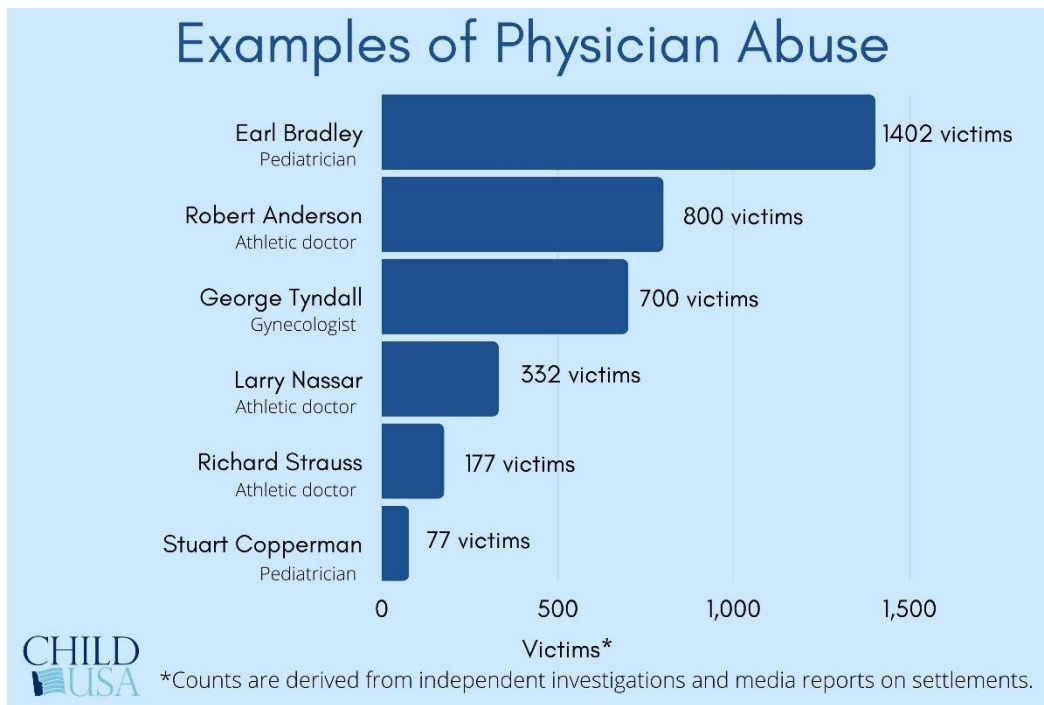
We commend you and the Committee for taking up HB 4306 and HB 4307, which will broaden access to justice for survivors of sexual assault in Michigan, with a focus on sexual abuse perpetrated by physicians. These bills extend the civil SOL for minor and adult victims of sexual assault to the later of age 28, 10 years from the abuse, or 6 years after discovery of injuries caused by the abuse. They expand victims’ rights for sexual assault claims against government actors by removing the notice of claim requirement and waiving governmental immunity for sexual assault



they covered up or knew or should have known about, but failed to prevent. Also, these bills open a 1-year revival window for adults and children who were sexually assaulted by their doctors to file previously expired claims.

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.**ⁱ Child sexual abuse is a social issue that occurs in all social groups and institutions—families, religious groups, youth-serving organizations, medical establishments, athletic institutions, etc.—and it affects everybody involved in these groups. Importantly, these groups are not mutually exclusive, and perpetrators always inhabit multiple roles within these various social groups. As a result, **the overwhelming majority of perpetrators of child sex abuse are someone the child knows.** And, most abuse occurs in the family setting.

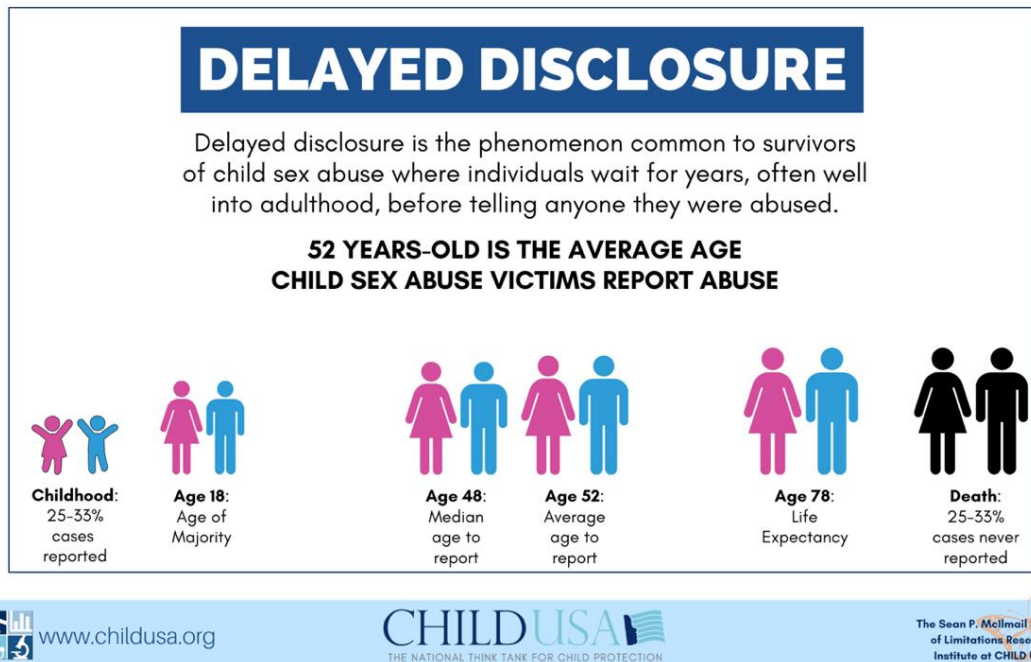


The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.ⁱⁱ It is settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.ⁱⁱⁱ Trauma impacts the brain of a 25 year-old in the same way it impacts the brain of a child because the brain does not fully develop its executive function before age 25.^{iv} As a result, trauma can have devastating impacts on the young adult brain in ways that lead to delayed disclosure of abuse.^v

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."^{vi} Studies suggest that many child sex abuse victims, as much as 33%, never disclose their abuse to anyone.^{vii} The disclosure 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.^{viii}

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**^{ix} 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 and leave future children vulnerable to preventable sexual assault.

II. SOL Reform Serves the Public Good by Preventing Future Abuse and Increasing Victims' Access to Justice

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 Michigan who are preying on one child after another because the existing SOLs provide that opportunity. By extending the SOL and opening a revival window, access to justice for some past victims will be available; this will also greatly reduce the present danger to the children of Michigan.

There are three compelling public purposes served by child sexual abuse SOL reform:

- 1) SOL reform **identifies hidden child predators and the institutions** that endanger children to the public, shielding other children from future abuse;
- 2) It **shifts the cost of abuse** from the victims and taxpayers to those who caused it; and
- 3) It **educates the public** about the prevalence, signs, and impact of child sex abuse so that it can be prevented in the future.

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE

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 www.childusa.org **CHILDUSA** THE NATIONAL THINK TANK FOR CHILD PROTECTION  The Sean P. Mehall Statute of Limitations Research Institute at CHILD USA

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. Preventing further abuse serves to help society—reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children 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. It creates more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

Also, 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.^x It is unfair for the victims, their families, and Michigan taxpayers to be the only ones who bear this burden; these bills level 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, Michigan could gain millions of dollars in revenue from Medicaid reimbursements from settlement funds and damages awards survivors recover.

III. Michigan Should Join the National Trend Toward SOL Reform for Sexual Assault by Extending its Civil SOL and Opening a Revival Window

There is a national and global movement for SOL reform for child sex abuse. 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.^{xi} 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.^{xii} 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.^{xiii}

By September of 2021, 35 states have introduced SOL reform bills for child sex abuse. Twelve states already have new SOL laws going into effect this year, including window laws in Arkansas, Colorado, Kentucky, Louisiana, Maine, and Nevada. This year, Michigan is one of 30 states trying to extend or eliminate civil SOLs and one of 24 states seeking to revive civil claims for past child sex abuse.^{xiv}

a. Michigan Should Extend its Civil SOL for Sexual Assault

Michigan has made strides recently to improve its SOLs for child sex abuse—extending its civil SOL from age 19 to age 28 and opening a brief window in 2018 for survivors of Larry Nassar to file claims—yet it still lags far behind most states. Michigan’s civil SOL for child sex abuse expires more than *two decades* before the average victim tells anyone they were abused. These bills keep the age 28 SOL as is for child sex abuse, but extend the discovery rule from 3 to 6 years which will help some survivors. The SOL for survivors of adult sex assault is a maximum of 5 years after the abuse and this bill would extend it to 10 years. In effect, Michigan’s short SOLs have kept a broad class of victims from coming to court, while protecting the institutions that sheltered abusers and covered up the abuse.

These bills will reduce victims' barriers to bringing claims for sexual assault and are an opportunity for the state to continue to remedy the injustice of short SOLs—for the children and adults of yesterday, today, and tomorrow.

b. Michigan Should Open a Revival Window for Sexual Assault Claims

Physician sex abuse is a particular scourge on society that, unfortunately, Michigan knows too well. Yet, it also occurs across the country with alarming frequency. Doctors have unique access to many patients, young and old, and those that abuse their privilege and commit horrific crimes of sexual assault tend to amass a staggering amount of victims. In Delaware, 1,400 children were identified as victims of Dr. Earl Bradley, a pediatrician; Ohio State identified at least 177 victims of Dr. Richard Strauss, a university physician; In California, the University of Southern California settled sex abuse lawsuits with about 17,000 former patients of gynecologist Dr. Georgia Tyndall; And in Michigan, the University of Michigan identified more than 800 victims of Dr. Robert Anderson and its 2018 window paved the way for Michigan State to settle sex abuse lawsuits with 332 victims of Dr. Larry Nassar, but even more victims have come forward since then.

CHILDUSA WATCH
WHAT ABOUT THE CHILDREN?

WINDOWS TO JUSTICE FOR CHILD SEX ABUSE VICTIMS

A **window** is a law that revives expired civil claims and allows adult survivors to sue for child sex abuse while the window is open.

Revival Laws for Child Sex Abuse: Windows and Age Caps
24 States, Washington D.C., & Guam revived previously expired CSA claims with a window and/or age limit revival law

19 states, Guam, and D.C. have adopted windows for child sex abuse.

AR, CA, CO, Guam, KY, LA, ME, NV, NJ, NC, and VT currently have open windows.

24 states have introduced window legislation for child sex abuse in 2021.

For more information, visit www.childusa.org

FOCUS ON FACTS

Revival laws recognize that society for too long did not understand the plight of those sexually abused and unfairly extinguished their rights long before they had the ability to report or seek justice for their abuse. 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 sex abuse.

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. Michigan is one of 24 states, Washington D.C. and Guam that have revival laws for child sex abuse claims, including 21 jurisdictions with windows.^{xv}

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,^{xvi} but provide long-overdue justice to older victims of child sex abuse.

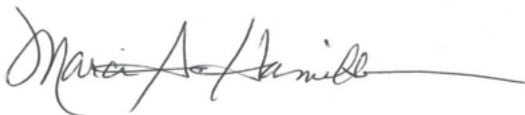
They also address the systemic issue of institutional child sex abuse, which occurs with alarming frequency in athletic institutions, youth-serving organizations, medical facilities, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen and for looking the 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 Michigan 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.

While Michigan's prior window for the victims of Larry Nassar was commendable progress, it left a gaping hole of injustice for all other Michigan survivors. Broadening the window with these bills for more survivors of physician sexual assault would be another step in the right direction for Michigan. It will give access to justice for past victims and will reduce the present danger to the people of Michigan.

Conclusion

Once again, we commend you for supporting this legislation, which is desperately needed for Michigan's children now and would validate survivors of sexual abuse. The people of Michigan deserve SOL reform to protect them today and into the future. Extending the time for survivors to file suit and opening a window for some expired claims is a positive step for Michigan'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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- ⁱ 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).
- ⁱⁱ 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 (hereinafter "Hoskell").
- ⁱⁱⁱ 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>.
- ^{iv} 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/>; 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%20of%20the%20prefrontal%20cortex%20occurs%20primarily,helps%20accomplish%20executive%20brain%20functions>.
- ^v 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).
- ^{vi} *Id.*
- ^{vii} *Id.*
- ^{viii} Hoskell, at 24.
- ^{ix} See *supra* n. v.
- ^x M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).
- ^{xi} CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/sol-report-2020.
- ^{xii} See *2019 SOL Tracker*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/2019sol.
- ^{xiii} See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/2020sol.
- ^{xiv} See *2021 SOL Tracker*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/2021sol.
- ^{xv} For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/law.
- ^{xvi} See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/law.