



**TO:** Honorable Members of the Joint Committee on the Judiciary

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

**RE:** S.1087: An Act amending the statute of limitations regarding criminal prosecutions for the crimes of sexual assault and rape of a child  
S.1088: An Act eliminating the statute of limitation in civil child sexual abuse cases

**DATE:** December 6, 2021

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Dear Honorable Members of the Joint Committee on the Judiciary,

Thank you for allowing us to submit testimony in support of S.1087 and S.1088, which will increase access to justice for survivors of child sexual abuse (“CSA”) and protect Massachusetts children today from preventable sexual abuse.

By way of introduction, Professor Marci Hamilton is a First Amendment constitutional scholar at the University of Pennsylvania who has led the national movement to reform statutes of limitations to reflect the science of delayed disclosure of childhood sexual abuse and who founded CHILD USA, a national nonprofit think tank devoted to ending child abuse and neglect. Kathryn Robb is the Executive Director of CHILD USA Advocacy, an advocacy organization dedicated to protecting children’s civil liberties and keeping children safe from abuse and neglect. Kathryn is also a survivor of child sex abuse.

We commend the Committee for taking up S.1087 and S.1088, which will eliminate the criminal and civil statutes of limitation (“SOLs”) for CSA crimes and open a permanent window during which all survivors can pursue justice no matter how long ago they were abused. This legislation will not only bring long overdue justice to survivors, but it will also greatly reduce the present danger to children by educating the public about CSA and exposing previously hidden predators who are still abusing children in Massachusetts.

**I. Delayed Disclosure of Abuse Science Supports SOL Reform for Child Sex Abuse**

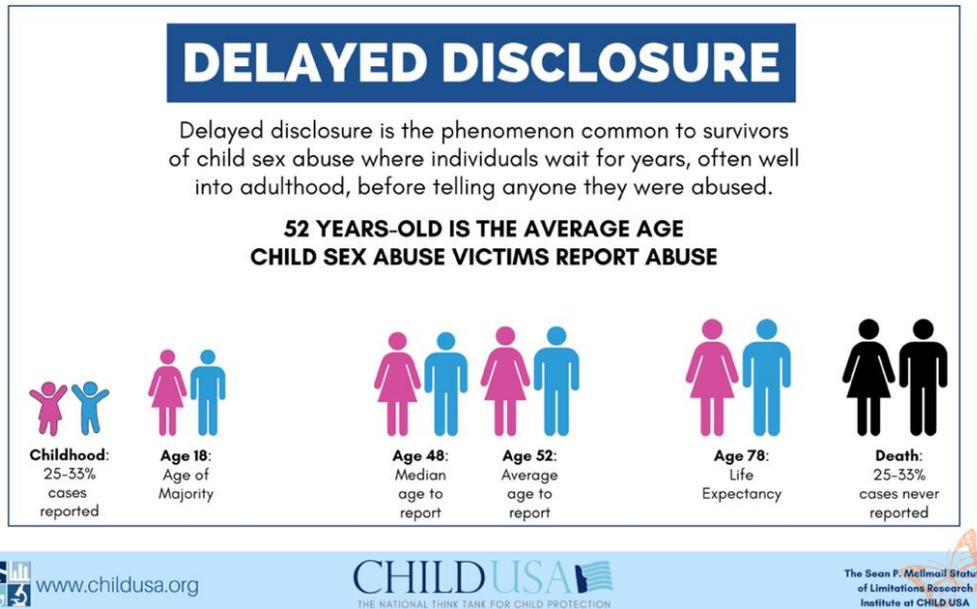
**A. More than 10% of Children are Sexually Abused**

There is a worldwide epidemic of CSA, with at least **one in five girls and one in thirteen boys sexually assaulted before they turn 18.**<sup>1</sup> CSA is a social issue that occurs in families and all social groups and institutions—religious, educational, medical, athletic, etc.—and it affects everybody involved in these groups. As a result, **nearly 90% of perpetrators of CSA are someone the child knows;** although still a problem, ‘stranger danger’ accounts for a small percentage of CSA. In fact, most abuse occurs in the family setting, perpetrators being – parents, stepparents, siblings, and grandparents.



## B. 52 Years-Old is Average Age Adults Disclose Childhood Sexual Abuse

It is a medical fact that most victims of CSA need decades to come forward and tell their horrific stories. In one study, 44.9% of male victims and 25.4% of female victims of CSA delayed disclosure by more than 20 years.<sup>2</sup> The average age of disclosure of CSA in a study of 1,000 victims was 52 years-old.<sup>3</sup>



## C. Why Children Delay Reporting They Were Sexually Abused

There is an extensive body of scientific evidence establishing that CSA victims are traumatized in a way that is distinguishable from victims of other crimes. As explained by the Center for Disease Control, “Adverse Childhood Experiences” (“ACEs”), like CSA, “have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity.”<sup>4</sup> Indeed, in 1998, one of the largest investigations to date of the effects of childhood abuse, including sexual abuse, established a strong relationship between ACEs and negative effects across the lifespan, including: disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease; and disability.<sup>5</sup>

It is settled that PTSD, denial, memory deficits, and complete disassociation are common coping mechanisms for CSA victims.<sup>6</sup> In fact, many of the injuries that result from CSA do not manifest themselves until survivors are well into adulthood. CSA victims may struggle to disclose their experiences due to the effects of trauma and psychological barriers such as shame, self-blame, or fear, as well as social factors such as gender-based stereotypes or stigma regarding victimization.<sup>7</sup>

Disclosure of their trauma 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>8</sup> Even as an adult, disclosure is a difficult and emotionally complex process, which involves knowing that he or she was abused, being willing to identify as an abuse survivor, and deciding to take action.

## II. SOL Reform Serves the Public Good by Giving Survivors Access to Justice and Preventing Future Abuse

Historically, a wall of ignorance and secrecy has been constructed around CSA, which has been reinforced by short SOLs that kept victims out of the legal system. SOLs are judicial housekeeping rules: they set an arbitrary deadline for pressing criminal charges or filing a civil lawsuit. Until recently, many states blocked criminal charges and civil lawsuits well before survivors were able to disclose their abuse—locking the courthouse doors and shutting victims out of justice. Short SOLs for CSA 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.

There is a vibrant national and global movement for SOL reform for CSA. 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>9</sup> **There are three compelling public purposes served by the child sexual abuse SOL reform movement**, which are explained in the graphic below:



### A. SOL Reform Identifies Hidden Child Predators and Institutions that Endanger Children

It is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. The decades before public disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Some predators abuse a high number of victims and continue abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the highest time between offense to conviction was 36 years.<sup>10</sup> 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.

### **B. SOL Reform Shifts the Cost of Abuse**

CSA generates staggering 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>11</sup> It is unfair for the victims, their families, and Massachusetts 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, Massachusetts could gain millions of dollars in revenue from Medicaid reimbursements from settlement funds and damages awards survivors recover.

### **C. SOL Reform Educates the Public to Prevent CSA**

SOL reform also educates the public about the danger of CSA 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.

## **III. Massachusetts Should Join the National Trend Toward SOL Reform for CSA**

### **A. Massachusetts Should Eliminate Civil SOLs and Revive All Expired Claims**

Massachusetts currently has a confusing patchwork of civil SOLs for CSA that has helped few survivors and left most without meaningful recourse for their injuries. Up until 2014, CSA survivors were blocked from filing suit after their 21<sup>st</sup> birthday. A 2014 SOL law acknowledged this was not nearly enough time and gave survivors born after June 26, 1993 until age 53 or 7 years from discovery of their injuries to sue all those responsible for their abuse. For survivors born June 26, 1993 or earlier, the SOL was similar but claims were revived only against the person who sexually abused them. Meanwhile, any survivor who was born before June 26, 1961 was completely sidelined by the 2014 law, unless they recently discovered their injuries. While Massachusetts made some progress, many adult survivors are still shut out of the courts and institutions that enabled rampant CSA have yet to be held accountable. Charitable institutions, in particular, have been and continue to be immunized from liability by an archaic law that caps damages against them at \$20,000 for enabling sexual abuse of children.

There is literally only one way to restore justice to Massachusetts' CSA survivors blocked from pursuing their claims by unfairly short SOLs—to revive their expired civil claims. Revival 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.

Massachusetts' is already one of 27 United States and territories that have revival laws for CSA claims.<sup>12</sup> Massachusetts' age 53 revival law is low-ranking because it does not help older survivors and only revives claims against perpetrators of the abuse.

The states that have revived expired civil SOLs for claims against individuals and institutions that endangered victims have learned more about hidden child predators and institutions that harbored them while empowering victims. These revival laws do not yield a high number of cases, but provide long-overdue justice to older victims of child sex abuse.<sup>13</sup> 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 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.

With S.1088, Massachusetts can remove all barriers to civil justice for survivors and reach the gold standard for SOL reform. If passed, Massachusetts will also join the 15 states and 2 U.S. territories that no longer have civil SOLs for CSA.<sup>14</sup> It will stand alongside neighboring leaders, Maine and Vermont, and the U.S. territories of Guam and the Northern Mariana Islands, who in addition to eliminating civil SOLs also revived all expired claims—allowing all survivors to file claims for abuse whenever they are ready and no matter how long ago they were abused. S.1088 will give all survivors the time they need to do the legal and emotional work necessary to revisit their childhood traumas and coordinate with attorneys to file their cases. If there is sufficient evidence to prove civil liability, the mere passage of time should never prevent survivors from accessing justice, especially in light of delayed disclosure science.

## **B. Massachusetts Should Not Protect Charitable Organizations that Enable CSA**

Massachusetts is one of a dwindling handful of states that has not yet abolished the doctrine of charitable immunity, and the **only state that still permits immunity for charitable organizations that willfully enable child sex abuse**. 72% of states have either abolished charitable immunity or never recognized it. Recently, New Jersey, which still has a charitable immunity statute, refused to continue shielding charities from liability for CSA when it enacted a broad revival window in 2019. The Massachusetts Charitable Immunity statute was introduced by the Supreme Judicial Court almost 150 years ago in 1876.<sup>15</sup> It is by far the worst in the nation with an offensively low \$20,000 cap on damages, which was set in 1971 and has not been increased or even adjusted for inflation since then.<sup>16</sup>

CSA has plagued our charitable institutions for too long and without accountability survivors cannot access justice, communities will remain in the dark about predators lurking within charitable organizations, and charities will not be motivated to change their ways to protect

children. S.1087 rightly recognizes the importance of holding all institutions accountable and does not exempt charitable organizations from meaningful liability. This important aspect of the bill signals to survivors that the state stands with them and not with their abusers and the charitable institutions that enabled their abuse.

### C. Massachusetts Should Eliminate Criminal SOLs

There should never be a limit on when the government can prosecute CSA crimes when they have sufficient evidence to file charges against a perpetrator. At this point, 44 states and the federal government have eliminated the criminal SOLs for at least the most serious CSA crimes. There are even states, like Connecticut, that have no criminal SOL for prosecuting all felony and misdemeanor CSA crimes.<sup>17</sup> Massachusetts is lagging behind, with SOL elimination for some CSA crimes against children under ages 14 or 16, in some instances. S.1087, would remove the criminal SOL for prosecuting indecent assault and battery and rape of all minors under age 18 and would be a step in the right direction for Massachusetts.

### IV. Conclusion

Once again, we commend you for supporting this legislation, which is desperately needed to validate adult survivors of CSA and protect Massachusetts children today from preventable CSA. Eliminating the civil SOL and reviving expired claims is a positive step for Massachusetts 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>1</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 CSA 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 CSA 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 CSA among North American boys and girls respectively).

<sup>2</sup> Patrick J. O’Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. Child Sex. Abuse 133 (2008).

<sup>3</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>4</sup> *The Adverse Childhood Experiences (ACE) Study*, Centers for Disease Control & Prevention, <http://www.cdc.gov/violenceprevention/acestudy/#1>; see also Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245 (1998); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089 (Dec. 2001) (explaining that childhood trauma can lead to negative health outcomes).

<sup>5</sup> See Felitti, at 245–58; see also R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARACH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) (“Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders”); M. Merricka., et al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (July 2017); see also Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress*, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., *Concomitance between childhood sexual and physical abuse and substance use problems: A review*, 22 CLINICAL PSYCHOL. REV. 27 (2002) (adult survivors of CSA are nearly three times as likely to report substance abuse problems than their non-survivor peers).

<sup>6</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>. See also 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>7</sup> Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

<sup>8</sup> Hoskell, at 24.

<sup>9</sup> CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at [www.childusa.org/sol-report-2020](http://www.childusa.org/sol-report-2020).

<sup>10</sup> Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 Child Abuse Negl. 579 (1995).

<sup>11</sup> M. Merricka, et. al., *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).

<sup>12</sup> See *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited Dec. 1, 2021), available at <https://childusa.org/windowsrevival-laws-for-csa-since-2002/>.

<sup>13</sup> See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Dec. 1, 2021), available at [www.childusa.org/law](http://www.childusa.org/law).



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<sup>14</sup> AK, AZ, CO, CT, DE, FL, IL, LA, ME, MN, NE, NV, NH, UT, VT, Guam, and NMI. For more information on civil SOL elimination, visit *2021 SOL Tracker*, CHILDUSA.ORG (last visited Dec. 1, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).

<sup>15</sup> *McDonald v. Massachusetts Gen. Hosp.*, 120 Mass. 432, 21 Am. Rep.529 (1876)

<sup>16</sup> M.G.L. Chapter 231 § 85K

<sup>17</sup> CT, DE, IL, IA, MD, MO, MT, SC, and WY fully eliminated criminal SOL for all CSA felonies and misdemeanors. For more information on criminal SOL elimination, visit *2021 SOL Tracker*, CHILDUSA.ORG (last visited Dec. 1, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).