



TO: Honorable Members of the New Hampshire House Finance Committee

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

RE: NH HB 1677: An act relative to the administration and settlement of claims of abuse at the youth development center and making an appropriation therefor.

DATE: January 20, 2021

Dear Honorable Members of the House Finance Committee,

Thank you for allowing us¹ to submit testimony in opposition to HB 1677, which will establish a compensation fund (Fund) for victims abused at the Youth Development Center (YDC). While we commend the members for recognizing the need to provide justice to victims of child sexual abuse (CSA), HB 1677 falls short of this noble goal by severely limiting victims' legal rights, including the right to just compensation for their claims, and which, by its very language, perpetuates false narratives about when, why, and how victims disclose their abuse.

I. HB 1677 Proposes a Fund Too Limited in Scope, Given the Documented Impact of Sexual Trauma on Children

New Hampshire courts acknowledge the state's responsibility in protecting the physical and psychological well-being of children.² This mantle is even more vital in cases of sexual violence.³ At bare minimum, New Hampshire must ensure that each child in its custody is not subjected to rape and violence; the State requires this standard of its' resident parents, and it must uphold the same standard for itself. The Fund proposed in HB 1677 fails to provide justice to the very children the State is tasked to protect.

A. There is a Nationwide Epidemic of CSA Causing Lifelong Damage to Victims

Currently, more than 10% of children are sexually abused, with at least one in five girls and one in thirteen boys sexually abused before they turn 18.⁴ CSA is a social problem that occurs in all social groups and institutions, including familial, religious, educational, medical, and athletic. Nearly 90% of CSA perpetrators are someone the child knows; in fact, roughly one third of CSA offenses are committed by family members.⁵ Moreover, CSA in New Hampshire has increased in recent years.⁶

The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:⁷

- Childhood trauma, including CSA, can have **devastating impacts on a child's brain**,⁸ including disrupted neurodevelopment; impaired social, emotional, and cognitive

development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD)⁹; and disability.¹⁰

- CSA victims suffer an **increased risk of suicide**—in one study, female CSA survivors were two to four times more likely to attempt suicide, and male CSA survivors were four to 11 times more likely to attempt suicide.¹¹
- CSA leads to an increased risk of **negative outcomes across the lifespan**, such as alcohol problems, illicit drug use, depression, marriage issues, and family problems.¹²

In addition to the devastating impacts of CSA itself, youth who encounter the juvenile justice system, like the victims who would be bringing claims under the Fund, often experience difficulties related to mental health, poverty, substance abuse, academic disadvantage, and subsequent recidivism. For example, a nationwide study from the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention found that 70% of children placed in a residential facility had experienced trauma, which may include physical or sexual abuse.¹³ Additional research showed that a high percentage of youth (70 percent) involved with the juvenile justice system has a diagnosable mental health disorder.¹⁴ Further, nearly half of students who enter a residential juvenile justice facilities have an academic achievement level that is below the grade equivalent for their age.¹⁵ Not only were the victims of the State's YDC betrayed by the very system that was supposed to both protect and help them, but they were also likely navigating the difficulties often faced by youth who come into contact with the juvenile justice system.

CSA is devastating to New Hampshire's children, and the Legislature's response should be tailored to all of its children. HB 1677 is an incomplete response to the enormous, ongoing problem in New Hampshire and creating a compensation fund limited to CSA victims of the YDC negates the experiences and trauma of thousands of other victims in New Hampshire.

B. HB 1677's Unreasonably Short Timeframe for Filing Claims Will Effectively Leave Many Victims Without the Opportunity to Seek Redress

Many victims of CSA suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, CSA victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities.¹⁶ Additionally, CSA survivors may struggle to disclose because of trauma and psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma surrounding victimization.¹⁷ Further, victims may develop a variety of coping strategies—denial, repression, dissociation—in order to avoid recognizing or dealing with the harm they suffered.¹⁸ These mechanisms may persist well into adulthood thereby delaying manifestation of CSA's traumatic effects and by proxy disclosure.

Moreover, disclosure of CSA to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the survivor knowing that he or she was abused, being willing to identify publicly as an abuse survivor, and deciding to act against their abuser. In light of these barriers to disclosure, it is not surprising that:

- In one study, 44.9% of male victims and 25.4% of female victims of CSA delayed discussing their abuse with anyone **by more than 20 years**.¹⁹
- Between **70% and 95%** of child sexual assault victims **never report** the abuse to authorities.²⁰
- Research has found a **higher rate of PTSD** symptoms in CSA victims delaying disclosure compared to those who did not delay disclosure.²¹

For both children and adults, disclosure of CSA trauma is a process and not a discrete event in which a victim comes to terms with their abuse.²² Therefore, HB1677's one year to file claims after which all future claims would be barred does not give victims the time they need to bring their claims. The harm to victims is compounded by the bill's provision establishing the publication date of the proposed Fund as the "conclusive proof" of the latest date a victim could reasonably discover their claim, *whether or not they file a claim*. All future claims, even legitimate ones, would be barred. New Hampshire should acknowledge the needs of victims and give them all the time they need to bring a claim, even if it is more administratively taxing.

II. HB 1677 Imposes an Arbitrary \$1.5 Million Cap on Claims That Undermines the Bill's Intended Purpose

The proposed cap of \$1.5 million unnecessarily limits an administrator's ability to accurately value a claim, while communicating to victims that the Fund will not consider the unique needs in each claim, and it may stymie the deterrent effect of victim compensation on future abuse.

A. Just Compensation for CSA Helps Shift the Significant Costs of Abuse from the Victim and Society to Those that Cause It

CSA generates staggering costs that impact the nation's health care, education, criminal justice, and welfare systems. The estimated lifetime cost to society of child sexual abuse cases occurring in the United States in 2015 is \$9.3 billion, and the average cost of non-fatal per female victim was estimated at \$282,734. Average cost estimates per victim include, in part, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs. Costs associated with suicide deaths are estimated at \$20,387 for female victims.²³ The average lifetime cost of child maltreatment is \$830,928 per victim.²⁴

B. The Cap Limits an Administrator's Ability to Assess Claims Individually to the Detriment of Those Most Severely Injured

There is no signature injury that flows from CSA—victims process the abuse and experience its effects in a variety of ways—making it difficult to assess its financial impact on victims.²⁵ Though the financial costs of abuse are significant, they are different for each individual victim. In the case against Larry Nassar, the average payout settlement will be at least \$1.28 million per victim,²⁶ although that number does not capture the highest payout amount. Similarly, a settlement between the Los Angeles Archdiocese and victims in 2007 gave an average of \$1.3 million to each victim.²⁷ Although the average claims hovered near the proposed cap in HB 1677, claims were not limited to that amount. The imposition of caps has a disparate impact on child sex abuse victims generally,

and especially on those most severely injured among them. The idea of concentrating the costs of the most severe injuries on the most vulnerable members of society while ostensibly safeguarding the financial interests of insurance companies in cases of institutional child sex abuse seems especially abhorrent and inapposite to the bill's legislative purpose. Capping claims under the proposed Fund communicates to victims that their individual experiences will not be considered or weighed in proportion to their suffering.

C. The Cap Creates a System of Deterrence for Victims that Favors Predators and the Institutions that Cover Up for Them

Limiting victim compensation diminishes the law's deterrent effect. Optimal deterrence requires that those who perpetrate harms bear the full social and financial costs of their behavior.²⁸ Potential liability for the full financial burdens borne by victims deters future bad actors and gives institutions incentive to invest in child protection. Therefore, HB1677's arbitrary cap significantly undermines incentives for reforms while rewarding those institutions that ignore the safety of children. The cap also does a terrible disservice to future victims who may be deterred from coming forward if they are denied the ability to hold fully accountable those responsible.

III. HB 1677 Is Neither Trauma-Informed Nor Victim-Focused

Despite declaring that it will endeavor to be trauma-informed, HB 1677 fails to contemplate a Fund that will consider the specific and unique emotional, procedural, and financial needs of individual victims.

A. The Fund's False Claim Referral Provision Will Deter Victims Who Have Already Been Let Down By the State From Filing Claims

False claims of sexual assault are rare and a victim's traumatic response makes it difficult to come forward in the first place. HB 1677 also gives the proposed Fund administrator the power to refer any claims it believes are false to law enforcement. Given the extreme rarity of false claims of CSA²⁹, this provision will only delay and deter legitimate claims by individuals who fear they will not be believed, or who do not have significant evidence. This provision further undermines any trust that victims of a state detention facility have in New Hampshire's willingness to compensate them fairly. Further, the threat of a law enforcement referral will likely have a disproportionately silencing impact on victims who choose to not be represented by council, if they do not trust the Fund process.

B. The Proposed Fund in HB 1677 Does Not Guarantee Victims That Their Stories Will Be Heard

Victims who survive CSA face significant barriers to recovery and one component of trauma-informed care is the choice and control over one's story.³⁰ Victims in New Hampshire may wish to share their stories in the course of making a claim or seeking recovery, but HB 1677 leaves all discretion about whether victims have an opportunity to meet with the administrator in the hands of the Fund. HB 1677 does not give victims the guarantee that they have the power or choice to share their stories, and this failing may further injure survivors and prevent healing.

C. The Structure of the Proposed Fund and Arbitration Will Keep the Facts About the Conditions Endangering Children from the Public

Historically, a wall of ignorance and secrecy has been constructed around CSA, which has been reinforced by legal mechanisms like short statutes of limitations that kept victims out of the legal system. It is in society's best 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.³¹ By allowing claims for past abuse to be brought to court, and not kept confidentially in a Fund proceeding, hidden predators are brought into the light and are prevented from further abusing more children.

Public disclosure also educates the public about the dangers 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 media 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.³² By shedding light on the problem, parents and other guardians are better able to identify abusers and responsible institutions, while the public is empowered to recognize grooming and abusive behavior and pressure youth serving organizations to implement prevention policies to report abuse in real time. Indeed, CSA publicity creates more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

HB 1677 suggests a binding Fund process followed by a binding arbitration process that would keep all claims out of court and from the public eye. In some cases, victims prefer to avoid the stress of litigation or remain anonymous. However, by proposing that *all* YDC claims be administered through the Fund, HB 1677 covers all claims in a shroud of silence and secrecy, including those claims of victims who would be empowered by coming forward on their own terms. HB 1677 takes away a victim's right to choose how they will share their story and seek redress, while robbing the public of an important opportunity to learn how abuse happens and what is required to prevent it in the future. This represents a structural failure of the Fund to place victims at the center of the compensation process. Given each of these factors, we oppose the passage of HB 1677.

I. Conclusion

Once again, we commend you for taking up the issue of compensation for survivors of CSA, which is desperately needed to validate survivors in New Hampshire and protect children from future abuse. However, doing so through the Fund proposed by HB 1677 will limit the claims of victims without producing lasting, preventative change. Please do not hesitate to contact us if you have questions regarding HB 1677 or if we can be of assistance in any way on other child protection issues.



Sincerely,

A handwritten signature in black ink that reads "Marci A. Hamilton".

Marci A. Hamilton, Esq.
Founder & CEO
CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
mhamilton@childusa.org
(215) 539-1906

A handwritten signature in black ink that reads "Kathryn Robb".

Kathryn Robb, Esq.
Executive Director
CHILD USA Advocacy
3508 Market Street, Suite 201
Philadelphia, PA 19104
krobb@childusadvocacy.org
(781) 856-7207

¹ 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 an outspoken survivor of child sex abuse.

² *Ashcroft v. Free Speech Coal*, 535 U.S. 234, 263 (2002) (O’Connor, J., concurring) (“The Court has long recognized that the Government has a compelling interest in protecting our Nation’s children.”). “There is also no doubt that[] [t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017) (citing *Ashcroft*, 535 U.S. at 244); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982) (It is clear that a state’s interest in “safeguarding the physical and psychological well-being of a minor” is “compelling.”); *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) (“First. It is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is compelling.”) (quoting *Globe Newspaper Co.*, 457 U.S. at 607); *State v. Weber*, 624 A.2d 967, 969 (N.H. 1993) (“In a case of sexual assault against a minor, the State has an interest in protecting the victim’s physical and psychological well-being.”); *State v. Guajardo*, 605 A.2d 217, 220 (N.H. 1992) (“Where the victim is under sixteen years of age, the State has a compelling interest in safeguarding the minor’s physical and psychological well-being.”).

³ *Id.*

⁴ 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).

⁵ Perpetrators often being parents, stepparents, siblings, and grandparents. Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19 (2007); David Finkelhor & Anne Shattuck, *Characteristics of Crimes Against Juveniles*, University of New Hampshire, Crimes Against Children Research Center (2012), available at http://www.unh.edu/ccrc/pdf/CV26_Revised%20Characteristics%20of%20Crimes%20against%20Juveniles_5-2-12.pdf.

⁶ Finkelhor, D., et al., *Updated Trends in Child Maltreatment, 2019*, CRIMES AGAINST CHILDREN RES. CTR. (Feb. 2021), http://www.unh.edu/ccrc/pdf/CV203%20-%20Updated%20trends%202019_ks_df.pdf.

⁷ B. A. van der Kolk, *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress*, 1(5) HARVARD REV. OF PSYCHIATRY 253-65 (1994); see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA (2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter “Hoskell”).

⁸ 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.” 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).

⁹ Josie Spataro et al., *Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females*, 184 Br. J. Psychiatry 416 (2004).

¹⁰ See Felitti, at 245–58; see also R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARCH 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).

¹¹ Beth E. Molnar et al., *Psychopathology, Childhood Sexual Abuse and other Childhood Adversities: Relative Links to Subsequent Suicidal Behaviour in the US*, 31 PSYCHOL. MED. 965 (2001).

¹² Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREV. MED. 430, 434 (2005).

¹³ Andrea J. Sedlak & Karla McPherson, *Survey of Youth in Residential Placement: Youth's Needs and Services* (Dec. 2010), <https://www.ojp.gov/pdffiles1/ojdp/grants/227660.pdf>.

¹⁴ Coccozza, J., & Skowyra, K. (2007). *Blueprint for change: A comprehensive model for the identification and treatment of youth with mental health needs in contact with the juvenile justice system*. Delmar, NY: The National Center for Mental Health and Juvenile Justice.

¹⁵ Andrea J. Sedlak & Karla McPherson, *Survey of Youth in Residential Placement: Youth's Needs and Services* (Dec. 2010), <https://www.ojp.gov/pdffiles1/ojdp/grants/227660.pdf>.

¹⁶ Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123 (2015).

¹⁷ 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).

¹⁸ Goodman, G.S., et. al., *A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy*, 14(2) PSYCHOL. SCI. 11 (2003).

¹⁹ Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008).

²⁰ See David Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, US DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (2008), available at <https://www.ojp.gov/pdffiles1/ojdp/214383.pdf> (Based on an analysis of an estimated 285,400 child sexual assault victims, researchers found that only 30% of cases involved police contact.); Kamala London et al., *Review of the Contemporary Literature on How Children Report Sexual Abuse to Others: Findings, Methodological Issues, and Implications for Forensic Interviewers*, 16 MEMORY 29, 31 (2008) ("Researchers have found a range of 5% to 13% of child sexual abuse victims reporting abuse to authorities across different studies").

²¹ Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19, 30 (2007).

²² 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 or over time as a victim recovers their memory. Hoskell, at 24.

²³ Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

²⁴ M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017).

²⁵ Putnam, F., *Ten-Year Research Update Review: Child Sexual Abuse*, 42 J. AM. ACAD. CHILD ADOLESCENT PSYCH. 269, 273 (2003).

²⁶ Dan Wetzel, *Larry Nassar's reign of terror amounts to \$500 million in payouts from Michigan State*, yahoo news (May 16, 2018), <https://www.yahoo.com/news/larry-nassars-reign-terror-amounts-500-million-payouts-michigan-state-175522029.html>.

²⁷ Suzanne Goldenberg, *LA archdiocese agrees \$660m payout for sex abuse victims*, The Guardian (July 16, 2007), <https://www.theguardian.com/world/2007/jul/16/religion.usa>; Mozingo, J. & Spano, J., *\$660-million settlement in priest abuses*, LOS ANGELES TIMES (July 15, 2007) <https://www.latimes.com/archives/la-xpm-2007-jul-15-me-priests15-story.html>.

²⁸ *Ferdon ex. Rel. Petrucelli v. Wisconsin Patients Compensation Fund*, 701 N.W.2d 440, 464 (2005).

²⁹ Victims of child sex abuse almost never make false claims, as we learned in Guam, California and Delaware, where windows already opened and closed. In Guam, approximately 200 survivors have filed claims since 2016, when it enacted legislation to eliminate and revive expired claims. No false claims have been reported. In California, there were anecdotal, unconfirmed reports of approximately 5 false claims out of the 1,150 filed, which means false claims in the area of child sex abuse are statistically insignificant.

³⁰ Maxine Harris & Roger D. Fallot, *Using Trauma Theory to Design Service Systems: New Directions for Mental Health Services* 89 (Spring 2001).

³¹ Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 *CHILD ABUSE NEGL.* 579 (1995).

³² E.g., Netflix's *Jeffrey Epstein: Filthy Rich*; HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal*.