

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.368: An Act relative to supporting survivors of child sexual abuse

DATE: January 25, 2022

Dear Honorable Members of the Joint Committee on the Judiciary,

Thank you for allowing us¹ to submit testimony in support of S.368, which will increase access to justice for survivors of child sexual abuse (“CSA”) and protect Massachusetts children from preventable sexual abuse by holding predators and institutions that enable abuse accountable. Further, the bill supports the science of delayed disclosure due to the trauma experienced by CSA victims in allowing greater access to seek compensation for these crimes.

I. S.368 Helps to Identify Hidden Child Predators and Institutions that Endanger Children, Hold Them Accountable, and Incentivize Greater Child Protection Policies

There is a worldwide epidemic of child sexual abuse that has spilled over into our nation’s institutions that serve children. In the United States, approximately 1 in 5 girls and 1 in 13 boys are sexually abused before the age of 18.² CSA is a social issue that occurs at all levels of society—including families, religious groups, youth-serving organizations, medical establishments, and sports teams—and it affects everyone involved in these groups. Importantly, these groups are not mutually exclusive, and perpetrators inhabit multiple roles within these various social groups.

Most instances of adult-perpetuated child sexual abuse are committed by someone the child knows and trusts.³ Most offenders also exploit or create a set of circumstances in order to be alone with their victims. Overall, research has shown that the most common locations of sexual assault are “at a friend’s home, in a neighborhood close to where the offender lived, while babysitting, and through an organized activity, such as scouts and sporting clubs.”⁴

Further, the Massachusetts Charitable Immunity statute was introduced by the Supreme Judicial Court almost 150 years ago in 1876.⁵ 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.⁶ S.368 takes a step in addressing this problem through the proposed amendment to the tort liability provision related to officers and directors of charitable corporations.

Without accountability for predators and institutions addressed in S.368, including nonprofit organizations, charities, and government entities that enable CSA, the **children these institutions serve remain at risk today**. This bill will incentivize implementing prevention policies and reporting abuse in real time. 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.⁷ 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.

II. Delayed Disclosure Science Supports the Amendments in S.368 Providing CSA Victims Enhanced Opportunity to Seek Compensation

The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:⁸

- Childhood trauma, including CSA, can have **devastating impacts on a child’s brain**,⁹ including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD)¹⁰; and disability.¹¹
- 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.¹²
- 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.¹³

As a result, trauma can have devastating impacts on the young adult brain in ways that lead to delayed disclosure of abuse.¹⁴ 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.¹⁵ It is settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.¹⁶

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.”¹⁷ Studies suggest that many child sex abuse victims, as much as 33%, never disclose their abuse to anyone.¹⁸ 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.¹⁹ 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.²⁰

By expanding the harsh time restraints for filing claims under the current law, S.368 recognizes the science of delayed disclosure in CSA cases and provides victims with greater access to seek the compensation for which they are entitled.

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

Child sexual abuse also generates staggering costs that impact the nation's health care, education, criminal justice, and welfare systems.²¹ **The estimated lifetime cost to society of child sexual abuse cases occurring in the U.S. in 2015 is \$9.3 billion, and the average cost of non-fatal per female victim was estimated at \$282,734.**²² 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

Child sexual abuse is a serious and costly public health problem across our country, and we must work together as a community to create laws and policies that keep children safe. By holding the responsible actors and organizations liable and expanding the opportunity for victims to seek the compensation they deserve when they otherwise might have been shut out, S.368 helps to shift these costs of abuse to those responsible.

IV. Conclusion

Once again, we commend you for considering this legislation, which is needed for both validating and compensating CSA survivors in Massachusetts, as well as ensuring that the children of Massachusetts will be cared for in environments that are so often trusted to be safe from sexual abuse.

Please do not hesitate to contact us if you have questions or if we can be of assistance in any way on other child protection issues.

Sincerely,



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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 USAdvocacy, 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 G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18 BMC PUBLIC HEALTH (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6180456/> (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 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).

³ Ateret Gewirtz-Meydan & David Finkelhor, *Sexual Abuse and Assault in a Large National Sample of Children and Adolescents*, 25 CHILD MALTREAT. 203, 210 (2020).

⁴ Stephen Smallbone & Richard Wortley, *Child Sexual Abuse: Offender Characteristics and Modus Operandi*, 193 TRENDS ISSUES CRIME CRIM. JUSTICE 1 (2000).

⁵ *McDonald v. Massachusetts Gen. Hosp.*, 120 Mass. 432, 21 Am. Rep.529 (1876).

⁶ M.G.L. Chapter 231 § 85K.

⁷ E.g., Netflix’s *Jeffrey Epstein: Filthy Rich*; HBO’s *At the Heart of Gold: Inside the USA Gymnastics Scandal*.

⁸ 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”).

⁹ 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).

¹⁰ Josie Spataro et al., *Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females*, 184 Br. J. Psychiatry 416 (2004).

¹¹ 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).

¹² 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).

¹³ Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREV. MED. 430, 434 (2005).

¹⁴ 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).

¹⁵ 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").

¹⁶ 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>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Hoskell, at 24.

²⁰ *Id.*

²¹ Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 *Child Abuse Negl.* 413 (2018) (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.).

²² *Id.*

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).