



**TO:** Chairman Carson, Vice Chairman Gannon, and Honorable Members of the New Hampshire Senate Judiciary 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:** April 7, 2022

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Dear Chairman Carson, Vice Chairman Gannon, and Honorable Members of the Senate Judiciary Committee,

Thank you for allowing us to submit testimony in partial support of HB 1677, which will establish a compensation fund (Fund) for victims abused at the Youth Development Center (YDC). 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.

We commend the members for recognizing the need to provide justice to victims of child sexual abuse (CSA), and we acknowledge the improvements already made to HB 1677. However, the claims settlement program in HB 1677 still falls short of the victim friendly and trauma-informed process it hopes to accomplish.

**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. *New York v. Ferber*, 458 U.S. 747, 756-57 (1982). This mantle is even more vital in cases of sexual violence. *State v. Guajardo*, 605 A.2d 217, 220 (N.H. 1992). 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 does address physical and sexual violence, but it fails to provide comprehensive 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. 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. Moreover, CSA in New Hampshire has increased in recent years. According to Finkelhor, D. and the colleagues in *Updated Trends in Child Maltreatment, 2019*.

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

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

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. Additional research showed that a high percentage of youth (70 percent) involved with the juvenile justice system has a diagnosable mental health disorder. Further, nearly half of students who enter a residential juvenile justice facility have an academic achievement level that is below the grade equivalent for their age. 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.

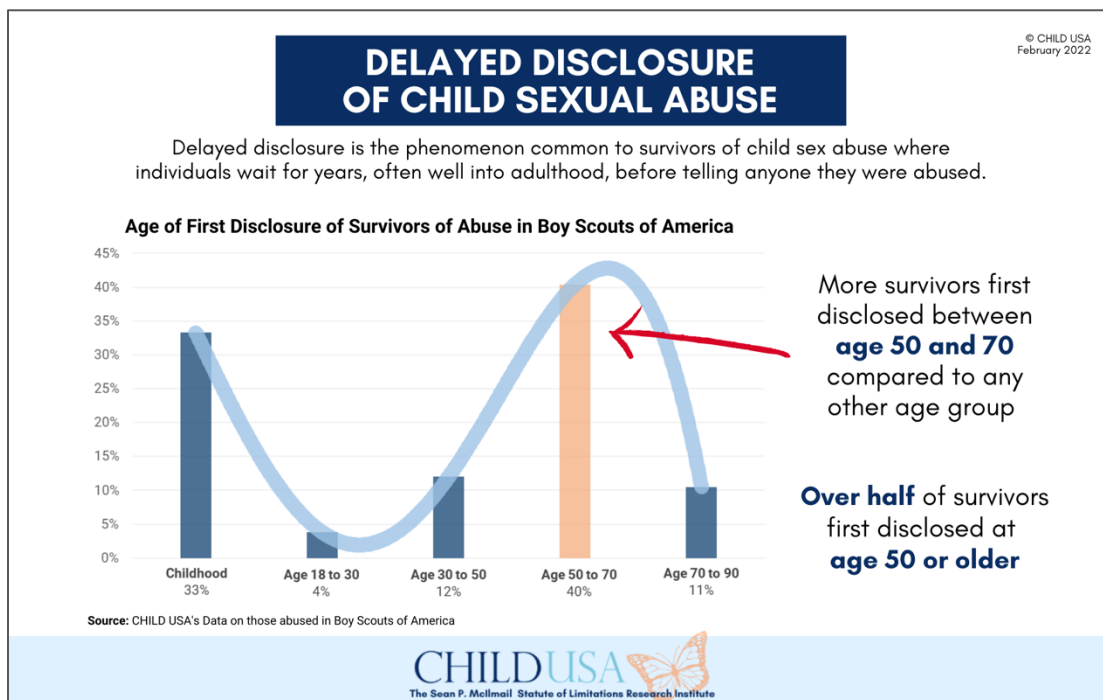
CSA is devastating to New Hampshire's children, and the Legislature's response should be tailored to all of its children. HB 1677 is an incomplete response to the enormous, ongoing problem in New Hampshire and creating a compensation fund limited to CSA victims and victims of physical abuse of the YDC negates the experiences and trauma of thousands of other victims in New Hampshire, especially when valuation of those claims considers the applicable statute of limitations if the claim were pursued as litigation.

#### **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. 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. Further, victims may develop a variety of coping strategies—denial, repression, dissociation—in order to avoid recognizing or dealing with the harm they suffered. 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 a study of survivors of abuse in Boys Scouts of America, **51% of survivors disclosed their abuse for the first time at age 50 or older.**
- **One-third** of CSA survivors **never report** their abuse to anyone.
- Research has found a **higher rate of PTSD** symptoms in CSA victims delaying disclosure compared to those who did not delay disclosure.



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. Therefore, HB1677’s two years 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 Cap on Claims That Undermines the Bill’s Intended Purpose**

The proposed cap of \$1.5 million on child sexual abuse claims and \$150,000 on physical abuse claims unnecessarily limits an administrator’s ability to accurately value a claim, and it may stymie the deterrent effect of victim compensation on future abuse.

### **A. 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. Though the financial costs of abuse are significant, they are different for each individual victim. For example:

- In the case against Larry Nassar, the average payout settlement will be at least \$1.28 million per victim, although that number does not capture the highest payout amount.
- A 2017 settlement between the Los Angeles Archdiocese and victims gave an average of \$1.3 million to each victim.
- A 2018 settlement between the Diocese of Brooklyn and four victims resulted in an average settlement of \$6.8 for each student.
- A 2020 settlement between Los Angeles Unified School District and victims resulted in an average of \$2.6 million to each victim.
- A 2022 settlement between Los Angeles Unified School District and victims resulted in an average of \$2.1 million to each victims.

Although the average claims hovered near the proposed cap in HB 1677, they are just that – *averages*. Claims were not limited to those amounts, simply because damages vary considerably per victim. Any averages by some victims should not limit the settlement of a victims who suffered greater damages.

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, and it may force them to choose between a low settlement offer and

going to court. Further, it reduces victims to a number calculated outside of their personal experience, pain, and trauma.

### **B. 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. 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 Fully 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**

HB 1677 gives the proposed Fund administrator the power to refer any claims it believes are false to law enforcement. False claims of sexual assault are rare, and a victim's traumatic response makes it difficult to come forward in the first place. Given the extreme rarity of false claims of CSA, 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 Should Not Force Victims Into Telling Their Stories**

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. 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 may or must 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**

The Proposed Fund would keep all claims out of court, requiring victims to waive any judicial remedies if they submit a claim, removing their right to bring a claim if they disagree with the findings of the Fund administrator.

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. 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. 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. 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 support the passage of HB 1677, conditional upon making our suggested incorporations.

## 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 or reach out to [info@childusa.org](mailto:info@childusa.org) 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".

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