

CHILD USA Legal Analysis on the Constitutionality of Rhode Island’s Child Sex Abuse Revival Law, R.I. GEN. LAWS § 9-1-51

Under Rhode Island law, it is a well-established principle that “legislative enactments are presumed to be constitutional.” Brennan v. Kirby, 529 A.2d 633, 639 (R.I. 1987). A party seeking to challenge the validity of a statute must “prove *beyond a reasonable doubt*” that the statute violates the State or Federal Constitution. Gorham v. Robinson, 186 A. 832, 837 (R.I. 1936) (emphasis added). See also Brennan, 529 A.2d at 639–41.

In 1986, Rhode Island amended its Constitution to add a civil due process clause. R.I. Const. art. I, § 2. This due process clause ensures that a person has “notice and an opportunity to be heard” before “any deprivation of . . . life, liberty, or property.” Moreau v. Flanders, 15 A.3d 565, 588 (R.I. 2011). Rhode Island’s Due Process clause tracks the language of the United States Constitution’s Fourteenth Amendment almost word for word,¹ and the due process analysis under both Constitutions has been, for the most part, “identical.” Wyrostek v. Nash, 984 F.Supp.2d 22, 27 (D.R.I. 2013) (citing Rhode Island Depositors Economic Protection Corp. v. Brown, 659 A.2d 95, 101 (R.I. 1995)).

Accordingly, just as the United States Supreme Court held that retroactive elimination of a civil statute of limitations did not constitute a denial of due process,² so should Rhode Island. Rhode Island courts should follow their own precedent and that of the United States Supreme Court to find that any presumptions against retroactivity can be readily overcome by the Legislature’s express intent and the compelling public policy reasons to enact R.I. Gen. Laws section 9-1-51, which revives child sex abuse statutes of limitation.

¹ Article 1, Section 2 of the Rhode Island Constitution provides, “[n]o person shall be deprived of life, liberty or property without due process of law,” while the Fourteenth Amendment of the U.S. Constitution provides, “nor shall any State deprive any person of life, liberty, or property, without due process of law.”

² Landgraf v. USI Film Products held that retroactive civil legislation is constitutional if two conditions are met: (1) the legislative intent is clear and (2) the change is procedural. 511 U.S. 244, 267 (1994). The Landgraf ruling affirmed the Supreme Court’s well-established precedent set forth in Chase Securities Corp. v. Donaldson, where the Court held that a state statute that abolished any statute of limitations defense the defendant might previously have had did not deprive the defendant of property without due process of law and did not violate the Fourteenth Amendment. 325 U.S. 304 (1945). The Chase Court explained that statutes of limitations represent “a *public policy* [enacted by a legislature] about the privilege to litigate . . . *their shelter has never been regarded as what is now called a ‘fundamental’ right.*” Id. (emphasis added).



I. Rhode Island’s Constitution Permits Legislative Revival of Time-Barred Claims

Extending statutes of limitations to retroactively revive otherwise time-barred claims has been deemed “wholly within legislative authority” and constitutional under Rhode Island law. See Dandeneau v. Bd. of Governors for Higher Educ., 491 A.2d 1011, 1012 (R.I. 1985); Twomey v. Carlton House of Providence, Inc., 320 A.2d 98, 101–02 (R.I. 1974) (finding “there were no federal or state constitutional restraints on the Legislature’s right to restore a remedy barred by the passage of time”); Spagnoulo v. Bisceglione, 473 A.2d 285 (R.I. 1984) (determining the retroactive application of Uniform Law on Paternity did not deprive putative father of due process of law). In Twomey, the Rhode Island Supreme Court upheld as constitutional an explicitly retroactive amendment to a statute of limitation that revived the remedy for a time-barred personal injury claim. Id. at 101–02. Similarly, the Rhode Island Supreme Court held in Dandeneau that it was constitutional for the Legislature to retroactively amend a statute of limitation from two to three years and revive the plaintiff’s claim. 491 A.2d at 1012.

Since then, the Rhode Island Supreme Court, in a matter it deemed of “first impression,” answered whether a new law that lengthened the statute of limitation for child sex abuse claims from three to seven years and contained a discovery rule that would toll the statute of limitation could apply retroactively to revive previously time-barred claims. Kelly v. Marcantonio, 678 A.2d 873 (R.I. 1996). The court reasoned that “the amendment to art. 1, sec. 2, precludes legislation with retroactive features permitting revival of an already time-barred action that would impinge upon a defendant’s vested and substantive rights and would offend a defendant’s art. 1, sec. 2, due process protections.” Id. at 883. Without undertaking any further constitutional analysis, the court held that “art. 1, sec. 2, in our State Constitution bars the retroactive application of section 9-1-51 to claims already time-barred.” Id. at 884.

Importantly, the provisions at issue in Kelly contained no explicit intent by the Legislature to revive expired claims.³ In fact, the statutory text makes absolutely no mention of which

³ “Section 9-1-51 reads in pertinent part as follows:

‘(a) All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within seven (7) years of the act alleged to have caused the injury or condition, or seven (7) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever period expires later.



claims—expired, pending or future—would be affected by the new statute of limitation. This is critical, given the Legislature’s role in determining policy and weighing public interest. In 2019, the Legislature amended section 9-1-51(a)(3) to clearly evidence its intent to revive expired child sex abuse claims by providing: “any claim or cause of action based on conduct of sexual abuse may be commenced within the time period enumerated in subsections (a)(1)(i) and (a)(1)(iii) *regardless if the claim was time-barred under previous version of general laws*” (emphasis added). Due to this major change in legislative language, the Kelly opinion is no longer instructive as to section 9-1-51’s constitutionality.

Kelly can also easily be distinguished from the retroactive laws the Rhode Island Supreme Court upheld as constitutional in pre-Kelly cases. In both Twomey and Dandeneau, the statutory language included an explicit directive for retroactivity. See Dandeneau, 491 A.2d at 1012 (noting the Act was amended during pendency of the appeal to extend the limitations period to three years, and stated “[t]his act shall take effect upon passage and shall apply to all pending cases brought hereunder”); Twomey, 320 A.2d at 100 (stating the 1971 act “shall apply retroactively to those actions which had accrued less than two years prior to August 1, 1971”). Accordingly, the Kelly holding is applicable only narrowly to the specific type of law at issue in that case—a statute of limitation *that does not include explicit retroactive or revival language*. Kelly’s progeny, Theta Prop. v. Ronci Realty co., Inc.,⁴ affirms this interpretation by noting that “[g]enerally, statutes and their amendments are ‘to operate prospectively *unless it appears by clear, strong language or by necessary implication that the Legislature intended to give the statute retroactive effect.*’” 814 A.2d 907, 915 (R.I. 2003) (quoting Pion v. Bess Eaton Donuts Flour Co., 637 A.2d 367, 371 (R.I. 1994)) (emphasis added).

‘(b) The victim need not establish which act in a series of continuing sexual abuse or exploitation incidents cause the injury complained of, but may compute the date of discovery from the date of the last act *by the same perpetrator* which is part of a common scheme or plan of sexual abuse or exploitation.

* * *

‘(e) As used in this section, “childhood sexual abuse” means any act committed by *the defendant* against a complainant who was less than eighteen (18) years of age at the time of the act and which act would have been a criminal violation of chapter 37 of title 11.’ (Emphasis added.)” Kelly, 678 A.2d at 875–76.

⁴ Theta is additionally distinguishable from the case at hand because it discussed the revival of a statute of repose, which is different than a statute of limitation. 814 A.2d at 913–17.



Therefore, the holding in Kelly does not render the revival provision in section 9-1-51 unconstitutional, as the provision now contains *explicit instructions that the law should revive civil claims* for Rhode Island’s child sex abuse victims whose claims had expired under prior versions of the law. Indeed, the Legislature’s language evidences its purposeful crafting of a law that could not be overturned by Kelly, but which must be upheld by the historically assured Rhode Island precedent that affirms the Legislature’s explicit intent to enact a statutory revival provision.

II. In Rhode Island, the Compelling Public Policy Interest in Providing Child Sex Abuse Victims Access to Justice Outweighs Any Unfairness, Rendering Revival Constitutional

Traditionally, the Rhode Island Supreme Court has been critical of the “vested right” concept, saying it is “merely conclusory and disfavored when considering due process challenges.” Brown, 659 A.2d at 103 (citing Raymond v. Jenard, 390 A.2d 358, 359–60 (R.I. 1978) (quoting Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 HARV. L. REV. 692, 696 (1960) (stating, “from an analysis of the cases it becomes apparent that it is impossible to reduce the potentially infinite variety of situations in which the problem of retroactivity can arise to a single common denominator”))). While the Kelly court subscribed to the vested rights theory, it did not address whether there are limitations to that vested right or if it is absolute. 678 A.2d at 884. Additionally, as previously discussed, the Kelly holding is not applicable to section 9-1-51’s current revival provision. Rhode Island courts should therefore rely on prior and better-established precedent.

One such precedential case is Brown, in which the Rhode Island Supreme Court explained that it “has traditionally employed a balancing test in cases involving retroactive statutes in which the court weighs the public interest in retroactivity against the unfairness created.” 659 A.2d at 101–04 (quoting Brennan, 529 A.2d at 640). Thus, even if a court were to determine that a defendant has a due process right to a statute of limitation, *that right can be overcome*. In the case of child sex abuse statutes of limitation, that right is readily overcome by the state’s compelling interest in exposing hidden child sexual predators, protecting the children of Rhode Island, and affording survivors of child sexual abuse access to justice based on current scientific



understandings of trauma and resulting disclosure timing. Indeed, the Rhode Island Legislature correctly recognized that the strength of public interest in enacting section 9-1-51 soundly outweighs any arguments of unfairness.

i. *Child Sex Abuse Uniquely Prevents Victims from Bringing Timely Claims*

Child sex abuse is a national public health crisis, with 3.7 million children sexually abused every year.⁵ It affects one in five girls and one in thirteen boys in the United States.⁶ An extensive body of evidence establishes that childhood sex abuse survivors are traumatized in a way that is distinguishable from victims of other crimes. Indeed, many victims of child sex abuse suffer in silence for decades before they speak to anyone about their traumatic experiences. As children, sex abuse victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of close relationships, or involvement with the authorities.⁷ This is a crime that typically occurs in secret, and many victims of sexual violence assume no one will believe them.⁸

Additionally, child sex abuse 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 the stigma of sexual victimization.⁹ Victims also often

⁵ See Preventing Child Sexual Abuse, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf> (last visited Feb. 22, 2022). See also D. Finkelhor, et. al., Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence, 169(8) JAMA PEDIATRICS 746 (2015).

⁶ 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); M. Stoltenborgh, et. al., A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World, 16(2) CHILD MALTREATMENT 79 (2011); 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).

⁷ 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), <https://pubmed.ncbi.nlm.nih.gov/25846196/>.

⁸ See Myths and Facts About Sexual Assault, CAL. DEP'T OF JUST., https://www.meganslaw.ca.gov/mobile/Education_MythsAndFacts.aspx (last visited June 2, 2022); National Child Traumatic Stress Network Child Sexual Abuse Committee, Caring for Kids: What Parents Need to Know about Sexual Abuse, NAT'L CTR. FOR CHILD TRAUMATIC STRESS 7 (2009), https://www.nctsn.org/sites/default/files/resources/fact-sheet/caring_for_kids_what_parents_need_know_about_sexual_abuse.pdf.

⁹ 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).



develop a variety of coping strategies—such as denial, repression, and dissociation—to avoid recognizing or addressing the harm they suffered.¹⁰ Moreover, they disproportionately develop depression, substance abuse, Post-traumatic Stress Disorder (“PTSD”), and challenges in personal relationships.

These mechanisms may persist well into adulthood, long past the date of the abuse. In fact, a study found that 44.9% of male child sex abuse victims and 25.4% of female child sex abuse victims delayed disclosure by *more than twenty years*.¹¹ Remarkably, it is estimated that 70–95% of child sexual assault victims never report their abuse to the police.¹² Additionally, research has found a higher rate of PTSD symptoms in child sex abuse victims who delay disclosure when compared with those who did not delay disclosure.¹³

In sum, trauma affects child sex abuse victims in serious and wide-ranging ways, logically necessitating decades for them to process their abuse, much less report it.¹⁴ By allowing these victims to come forward, section 9-1-51’s revival provision reasonably responds to this harsh reality.

ii. *The Science of Trauma and Delayed Disclosure Support the Legislature’s Enactment of Section 9-1-51 as a Reasonable Response to Rhode Island’s Compelling Public Policy Interest in Child Protection*

Section 9-1-51’s revival provision serves Rhode Island’s “compelling” interest in child protection. See, e.g., *New York v. Ferber*, 458 U.S. 747, 756–57 (1982); *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017) (noting that “[t]here 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

¹⁰ G.S. Goodman et. al., *A prospective study of memory for child sexual abuse: New findings relevant to the repressed-memory controversy*, 14 PSYCHOL. SCI. 113–8 (2003), <https://pubmed.ncbi.nlm.nih.gov/12661671/>.

¹¹ Patrick J. O’Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse*, 17 J. CHILD SEX. ABUSE 133 (2008).

¹² D. Finkelhor et al., *Sexually Assaulted Children: National Estimates and Characteristics*, US DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS (2008), <https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf>.

¹³ 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), <https://pubmed.ncbi.nlm.nih.gov/17255075/>.

¹⁴ Rebecca Campbell, Ph.D., *“The Neurobiology of Sexual Assault: Explaining Effects on the Brain,”* NAT’L INST. OF JUSTICE (2012), <https://upc.utah.gov/materials/2014Materials/2014sexualAssault/TonicImmobilityWebinar.pdf>; *R.L. v. Voytac*, 971 A.2d 1074 (N.J. 2009); Bessel A. van der Kolk M.D. et al., *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society* (2006).



people.”) (citing Ashcroft v. Free Speech Coal., 535 U.S. 234, 244 (2002)); State v. Taylor, 562 A.2d 445, 454–55 (R.I. 1989) (stating, “[t]he protection of the psychological and physical well-being of minor children is a compelling and therefore also a legitimate state interest.”); In re Ephraim L., 862 A.2d 196, 200 (R.I. 2004) (asserting that a “state’s role in protecting children may properly be preventive of harm as well as remedial.”) (quoting In re Lester, 417 A.2d 877, 881 (R.I.1980)); Heroux v. Carpentier, 1998 WL 388298, at *10 (R.I. Super. 1998) (recognizing the court “must exercise its common law jurisdiction to protect the interests of children within its jurisdiction” from a “knowing and deliberate course of conduct” by sexual predators).

Rhode Island’s compelling interest in protecting its children from sexual abuse weighs in favor of a civil revival window that would expose hidden predators and prevent them from inflicting future harm on Rhode Island’s children. Just as Ferber found in its unanimous decision, Rhode Island’s responsibility to prevent the sexual abuse of minors is a “government objective of surpassing importance.” 458 U.S. at 757. Section 9-1-51’s revival provision serves three compelling public purposes: it (1) identifies previously unknown child predators; (2) shifts the cost of abuse from victims to those who caused the abuse; and (3) educates the public to prevent future abuse.

First, section 9-1-51’s revival provision facilitates the identification of previously unknown child predators¹⁵ and the institutions that shield them, who would otherwise remain hidden. The decades before a victim is ready to disclose give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Unfortunately, unidentified predators continue abusing children; for example, one study found that 7% of offenders sampled committed offenses against forty-one to 450 children, and the longest time between offense and conviction was thirty-six years.¹⁶ Through section 9-1-51, the Legislature empowered victims to identify Rhode Island’s hidden child predators and the institutions that endanger children, which

¹⁵ Michelle Elliott et al., Child Sexual Abuse Prevention: What Offenders Tell Us, 19 CHILD ABUSE NEGL. 579 (1995).

¹⁶ Id.



helps prevent those predators from further abusing children and allows the public to develop policies to inhibit new abuse from occurring in the long-term.¹⁷

Second, section 9-1-51's revival provision helps educate the public about the dangers of child sex abuse and how to prevent such abuse. 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 communities about the insidious ways child molesters operate to sexually assault children, as well as the institutional failures that enabled their abuse.¹⁸ Because section 9-1-51 permits an increased number of child victims to come forward, it sheds light on the prevalence of child sex abuse, which allows parents and other guardians to become better equipped with the tools necessary to identify abusers and responsible institutions, while empowering the public to recognize grooming and abusive behavior. Indeed, statute of limitation reform not only provides access to justice previously withheld from victims of child sex abuse, but it also prevents further abuse by fostering social awareness while encouraging public and private institutions to implement accountability and safe practices.

Third, the cost of child sex abuse to victims is enormous,¹⁹ and they, along with the State of Rhode Island, unjustly carry the burden of this expense. The estimated lifetime cost to society from United States child sex abuse cases that occurred in 2015 is \$9.3 billion, while the average cost per non-fatal female victim was estimated at \$282,734.²⁰ Average costs per victim include, but are not limited to, \$14,357 in child medical costs, \$9,882 in adult medical costs, \$223,581 in

¹⁷ See generally, Making the Case: Why Prevention Matters, PREVENTCHILDAUSE.ORG (last visited February 22, 2022), <https://preventchildabuse.org/resource/why-prevention-matters/>; Preventing Adverse Childhood Experiences, CDC.GOV, <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

¹⁸ E.g., Jeffrey Epstein: Filthy Rich (Netflix 2020); At the Heart of Gold: Inside the USA Gymnastics Scandal (HBO 2019).

¹⁹ See M. Merricka, et al., Unpacking the impact of adverse childhood experiences on adult mental health, 69 CHILD ABUSE & NEGLECT 10 (July 2017); I. Angelakis et al., Childhood maltreatment and adult suicidality: a comprehensive systematic review with meta-analysis, PSYCHOLOGICAL MEDICINE 1-22 (2019); Gail Hornot, Childhood Trauma Exposure & Toxic Stress: What the PNP Needs to Know, J. PEDIATRIC HEALTHCARE (2015); Perryman Group, Suffer the Little Children: An Assessment of the Economic Cost of Child Maltreatment (2014), <https://www.perrymanngroup.com/media/uploads/report/perryman-suffer-the-little-children-11-2014.pdf>.

²⁰ Elizabeth J. Letourneau et al., The Economic Burden of Child Sexual Abuse in the United States, 79 CHILD ABUSE NEGL. 413 (2018).



lost productivity, \$8,333 in child welfare costs, \$2,434 in costs associated with crime, and \$3,760 in special education costs.²¹ Costs associated with suicide deaths are estimated at \$20,387 for female victims.²² These staggering expenses gravely affect victims and also impact the nation's health care, education, criminal justice, and welfare systems.²³ Revived child sex abuse cases that result in awards and settlements not only equitably shift some of these costs away from victims and onto the abusers, but they also save the State money by reducing expenditures on public services.

Nevertheless, the prior statutes of limitation in Rhode Island for child sex abuse victims were age twenty-five to file a suit against abusers and age twenty-one for claims against other defendants. R.I. Gen. Laws § 9-1-51 (1993); § 9-1-14(b) (1993). These statutes of limitation constituted an oppressive barrier to justice, rendering it impossible for the vast majority of victims to bring their claims to court. Yet, because it is unconstitutional to revive a criminal statute of limitation, filing civil claims pursuant to the revival provision is the *only avenue of justice available* to many survivors.²⁴

Accordingly, the Legislature's enactment of section 9-1-51's claim revival provision not only reasonably remedied the long-standing injustice to child sexual abuse victims barred from bringing their claims under illogically short time restraints, but also serves Rhode Island's compelling public policy interests in keeping its children safe and preventing future child sexual abuse. Therefore, a finding that the Kelly holding bars all revival legislation—regardless of explicit statutory language, clear legislative intent, and compelling societal interests—would eviscerate legislative authority and buck the national trend of reviving civil claims to provide justice to victims of child sex abuse.²⁵

²¹ Id.

²² Id.

²³ Id.

²⁴ Stogner, 539 U.S. at 610 (holding that retroactive application of a criminal statute of limitations to revive a previously time-barred prosecution violates the *Ex Post Facto* Clause of the United States Constitution).

²⁵ See, e.g., Harvey v. Merchan, 860 S.E.2d 561, 566 (Ga. 2021); Doe v. Hartford Roman Catholic Diocesan Corp., 119 A.3d 462, 496 (Conn. 2015); Sliney v. Previte, 41 N.E.3d 732, 739–40 (Mass. 2015); Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1258–60 (Del. 2011); Cosgriffe v. Cosgriffe, 864 P.2d 776, 779–80 (Mont. 1993); K.E. v. Hoffman, 452 N.W.2d 509, 514 (Minn. Ct. App. 1990).



III. Conclusion

Under Rhode Island constitutional law, any presumptions against retroactively reviving a child sex abuse statute of limitation can be readily overcome by the Legislature's express intent and compelling public policy interests. Therefore, Rhode Island courts should uphold the constitutionality of R.I. Gen. Laws section 9-1-51.

