

**TO:** Honorable Members of the House Judiciary Committee

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

**RE:** H5911/H5770: Elimination of the criminal statute of limitation for second-degree sexual assault and extension of the criminal statute of limitation from 3 to 10 years from the offense

**DATE:** March 16, 2023

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Dear Honorable Members of the House Judiciary Committee,

Thank you for allowing us to submit testimony in support of H5911/H5770 which, if passed, would eliminate the criminal statute of limitation (SOL) for second-degree sexual assault and extend the criminal SOL for third-degree sexual assault from 3 to 10 years from the date of offense. This legislation reflects a better understanding of the complex nature of these specific crimes and will give victims greater opportunity to seek the justice they deserve.

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 that can delay disclosure of childhood sexual abuse. She is also the founder and CEO of CHILD USA, a nonprofit interdisciplinary think tank devoted to ending child abuse and neglect and ensuring access to justice for victims. 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.

There is an expansive body of information about child sexual abuse and the operation of SOL reform which supports Rhode Island's modest bills. In fact, it would support bills that would provide more expansive opportunities for victims, and we encourage the General Assembly to consider such changes in the future. Rhode Island's need to enact SOL reform as soon as possible to protect the state's children and provide an avenue for victims to seek justice is explained below.

## I. Research on Trauma and CSA Support SOL reform

Child sexual abuse is a public policy crisis. 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.<sup>1</sup> Many victims suffer in silence for decades before they tell *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.<sup>2</sup> Additionally, CSA victims may struggle to disclose because of trauma and psychological barriers such as shame and self-blame.<sup>3</sup> Often, perpetrators of abuse shame and threaten their victims into silence.



Disclosure of CSA to the authorities for criminal prosecution 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 victim, and deciding to act against their abuser. In light of these barriers to disclosure, it is not surprising that an estimated **70%** of child sexual assault victims never contact police to report abuse.<sup>4</sup>

When victims remain silent until after the statute of limitation has expired, criminal charges are barred and the perpetrator escapes prosecution. 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.<sup>5</sup> To effectively protect children from abuse, SOL laws must reflect this reality.

## **II. Extending or Eliminating the Criminal SOL Effectively Ameliorates the Harsh Effects of SOLs for CSA**

The ability to prosecute sexual assault and abuse decades after it occurs is scientifically justified because of the unique harms borne by victims of these heinous crimes. The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:<sup>6</sup> Childhood trauma, including CSA, can have **devastating impacts on a child's brain**,<sup>7</sup> including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD)<sup>8</sup>; and disability.<sup>9</sup> The devastating consequences of CSA usually **persist well into adulthood**. The damage caused by the perpetrator is not attenuated or eliminated by the mere lapse of time—the harms to the victim do not belong to the past but continue every single day.

Moreover, perpetrators of child sexual abuse escape prosecution for their acts when the abuser uses threats and coercion to prevent the victim from reporting the offense until after the SOL has expired, or when the victim is too young to report the abuse within the statutory period. Similarly, the public has learned over the last two decades about the pervasiveness of CSA in some of our most beloved institutions and the lengths that they have gone to cover up the truth. They have intimidated witnesses, destroyed evidence, and obstructed justice. It is manifestly unjust to deny victims the opportunity to bring their abusers to justice when the delay in disclosure is precisely a result of the perpetrators or their aiders and abettors own conduct.

## **III. Criminal SOL Reform Is Critical to Child Protection Because Perpetrators of CSA Remain a Threat Throughout Their Lives**

Unlike other types of criminal offenders, the recidivism risk of child sex abusers does not significantly decrease merely by the passage of time. A study of 91 child sex offenders found that 30% had 10 or more victims, 23% had committed offenses against 10 to 40 children, and 7% had committed offenses against 41 to 450 children. Moreover, **55% reported that their offenses became more serious over time**.<sup>10</sup> For example, when the *Boston Globe* shed light on the Boston Archdiocese's cover-up of child sex abuse in 2002, we learned about one of the worst priests, John Geoghan, who was sexually abusing children well into his 80s. Thus, even a victim who is in middle age can protect other children from sex abuse by pressing charges.

When short SOLs prevent the state from prosecuting historical cases of abuse, child abusers are not convicted, and they do not enter the sex offender registry thus leaving predators free to access professional and volunteer positions that require close contact with children. Short SOLs are a procedural “loophole” that undermines the effectiveness of legislation aimed at protecting children.

Short criminal SOLs for sexual assault and abuse play into the hands of perpetrators by diminishing the certainty of punishment and permitting their identities to remain hidden, enabling them to continue their reign of horror in perpetuity. This is a zero-sum game where denying victims justice correspondingly frees up pedophiles to pursue more children. The scientific and empirical evidence overwhelmingly supports these modest changes to Rhode Island’s law.

#### **IV. Criminal SOL Reform for CSA Will Not Increase Judicial Error**

The opponents of SOL reform often argue that the passage of time significantly weakens their ability to defend themselves against decades old claims of abuse because memories fade, witnesses disappear, and evidence deteriorates. However, extending or even eliminating the SOL does not alter the normal operation of the criminal justice process. Amending an SOL does not alter the burden of proof which falls squarely upon the prosecution. Defendants are not required to prove their innocence but rather the accused is presumed innocent until proven guilty. If there is insufficient evidence such that the prosecution cannot carry its burden, then the case is over.

Further, the availability and robustness of evidence does not necessarily hinge on the time that has elapsed since the crime’s occurrence. Indeed, there are crimes committed decades ago, in which there may be abundance evidence, reducing the possibility of error to a minimum. In sexual crimes against minors there are at least five situations where the passage of time does not entail excessive difficulties to proving that a crime has occurred:

- 1) Later confession by the perpetrator
- 2) Discovery of DNA evidence and/or identification of suspect through DNA profiling
- 3) Existence of graphic materials memorializing abusive acts
- 4) Multiple allegations of sexual abuse against the same perpetrator for similar abusive acts
- 5) Documentary evidence such as witness statements, medical records, and prior complaints.

The supposed problem of old evidence has not posed a problem in other states, because the prosecution, again, bears the burden of proving guilt beyond a reasonable doubt. Without corroborating evidence, the case does not go forward. Conversely, short criminal SOLs for CSA means that fewer perpetrators will be prosecuted and they will be free to abuse more children and their victims and society will be forced to bear the cost.

#### **V. Conclusion**

Science supports the need to provide greater time for CSA victims seeking to bring their perpetrators to justice to come forward. Short SOLs keep the public in the dark as to the identities

of individuals who pose an ongoing and significant risk to their children. Even a modest extension of the SOL can help ameliorate some of the harm to victims and to the citizens of Rhode Island.

Please do not hesitate to contact us if you have questions regarding statute of limitations reform, or if we can be of assistance in any other way.

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> 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).

<sup>3</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>4</sup> A review of the CSA disclosure literature reported that studies found a range of 5% to 13% of CSA victims reporting abuse to authorities. Studies relying on self-report data from survivors find an average rate of CSA approximately 30 times greater than studies that use reports from official “informant” sources like police and child protective services (12.7% vs. 0.4%).

<sup>5</sup> 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.

<sup>6</sup> 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](https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf).

<sup>7</sup> 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.

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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).

<sup>8</sup> Josie Spataro et al., *Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females*, 184 Br. J. Psychiatry 416 (2004).

<sup>9</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. 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).

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