



January 30, 2021

The Honorable Lawrence R. Klemin, Chair
And Honorable Members of the House Judiciary Committee
The North Dakota Legislature
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

RE: House Bill No. 1384, a Bill for an Act to amend and reenact section 28-01-2.5 of the North Dakota Century Code, relating to limitations on actions alleging childhood sexual abuse.

Dear Chairman Klemin and members of the House Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USA Advocacy, to submit testimony regarding HB 1384, which will increase access to justice for victims of childhood sexual abuse and enhance protection for children in North Dakota.

By way of introduction, I am Professor Marci Hamilton, the Founder, CEO, and Academic Director of CHILD USA, a national, interdisciplinary think tank dedicated to the prevention of child abuse and neglect at the University of Pennsylvania, where I am the Robert A. Fox Professor of Practice. I am the author of *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), which makes the case for statute of limitations (SOL) reform in the child sex abuse arena, and the leading expert on the history and constitutionality of SOL reform.

CHILD USA leads the national reform movement for child sex abuse SOLs and is the only organization tracking SOLs for child sex abuse in every state. CHILD USA provides an analytical overview of SOL reform for child sex abuse, as well as other cutting-edge issues related to child protection, at www.childusa.org/law.

Kathryn Robb is the Executive Director of CHILD USA Advocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USA Advocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA, who advocates for child protection and better laws, including statutes of limitations (SOLs), through legal, social science, and medical research. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up HB 1384, which will expand North Dakota's delayed discovery rule and extend the SOL for child sex abuse claims. This will allow victims to come forward and pursue justice within 10 years after they are advised by an attorney that they have a claim. The current 10-year discovery rule runs from when a victim knows a potential claim exists, which has been interpreted to mean when a victim discovers their injury, and in



effect, gives victims a much shorter amount of time to pursue claims. There is an epidemic of child sexual abuse. Changing the law surrounding the issue will push North Dakota forward into a better future and closer to the national trend.

Statutes of limitations, or SOLs, are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that has prevented victims from obtaining justice and naming their perpetrators publicly for fear of retaliation.

I. Delayed Disclosure Science Supports Discovery Rules for Child Sex Abuse Claims

There is a worldwide epidemic of child sex abuse, with at least **one in five girls and one in thirteen boys sexually assaulted before they turn 18**.¹ Most claims expire before the victims are capable of getting to court. This bill would protect the children of North Dakota by making it easier for victims to come forward and identify their perpetrators in a court of law.

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. 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.² It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.³

As the following graphic demonstrates, based on the best science, **age 52 is the average age child sex abuse victims tell anyone they were abused**.⁴ Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked, shutting victims out of justice.

¹ 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 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(2) 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); Preventing Child Sexual Abuse, CDC.GOV (last visited Nov. 14, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; 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).

² 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").

³ 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>.

⁴ Delayed disclosure studies available at *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.



www.childusa.org

CHILD USA
THE NATIONAL THINK TANK FOR CHILD PROTECTION

The Sean P. McIlmail Statute
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It is a medical fact that victims of child sex abuse often need decades to come forward.

They are traumatized from the abuse, incapable of processing what happened to them, and often dependent on the adults who perpetrated or caused the abuse. Short SOLs for child sex abuse play into the hands of the perpetrators and the institutions that cover up for them; they disable victims’ voices and empowerment.

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.”⁵ Studies suggest that many victims, as much as 33%, never disclose their abuse.⁶ The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. 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

⁵ 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).

⁶ *Id.*

time as a victim recovers their memory.⁷ In fact, the average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.⁸

Unfortunately, the SOLs on child sex abuse claims often expire long before victims tell anyone they were abused. The SOLs demand too much of victims; it is unreasonable to require victims to seek legal counsel to litigate their claims against the person who sexually assaulted them and beloved community institutions before they are even able to disclose their abuse to relatives and friends. HB 1384 would support child sex abuse victims who come to terms with their abuse and their injuries later in life and enable more victims to hold those who caused their abuse accountable on a more realistic timeline.

II. SOL Reform Serves the Public Good by Increasing Victims' Access to Justice and Preventing Future Abuse

There are untold numbers of hidden child predators in North Dakota who are preying on one child after another because the existing SOLs provide that opportunity. By extending the SOL via a broader discovery rule, access to justice for some past and future victims will be available; this will also greatly reduce the present danger to the children of North Dakota.

There are three compelling public purposes served by child sex abuse statutes of limitations reform:

- 1) SOL reform *identifies hidden child predators to the public so children will not be abused in the future;***
- 2) It *shifts the cost of abuse from the victims to the predators and those that hid them; and***
- 3) It *educates the public about the prevalence and harm from child sex abuse so that families and the legal system can protect victims more effectively.***

The net result is that society comes together to support the traumatized victims and to heal itself. This is a vital step in the process toward children's civil rights and human rights overall.

Historically, a wall of ignorance and secrecy has been constructed around child sex abuse, which has been reinforced by short SOLs that kept victims out of the legal system. Perpetrators and institutions have benefitted from short SOLs and until recently, most states, and especially North Dakota, have shut down most cases. That is a major reason we knew so little about the epidemic of child sex abuse.

Studies establish that child sex abuse survivors have an inherently difficult time coming forward. It is well-established that most victims miss the SOL deadlines because of the delayed disclosure that is caused by the trauma child sex abuse inflicts on the victim. The reasons for delay are specific to each individual, but often involve mental and/or physical health issues that result from

⁷ Hoskell, at 24.

⁸ 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>.

the sex abuse (e.g., depression, PTSD, substance abuse, alcoholism, and physical ailments) and the large power differential between the child victim and the adult perpetrator, as well as the power dynamics of the institution. Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready.

Because of its lifelong effect on health and well-being that can erect high barriers to disclosure and the fact that many perpetrators pursue and assault children even in their elder years, childhood sexual abuse needs to be added to the list of laws that should not be subject to an SOL, like kidnapping, fraud and embezzlement, war crimes, treason, and murder in the United States.

II. North Dakota Should Join the National Trend Toward SOL Reform for Child Sex Abuse by Expanding its Delayed Discovery Rule

There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement from 2002 through 2019, see CHILD USA's 2019 SOL Report.⁹ 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with twenty-three states and Washington D.C changing their SOLs for the better in 2019.¹⁰ The powerful SOL reform wave rode its way into 2020, with thirty states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.¹¹ In January of 2021 alone, 19 states have already introduced SOL reform bills.¹²

North Dakota's civil SOL for child sex abuse is currently the shortest in the nation, expiring after a survivor reaches age 19 or 10 years from discovery of a claim for abuse.

North Dakota first recognized that its common law discovery rule was applicable to child sex abuse cases in 1989.¹³ The 2-year SOL began to run when the plaintiff "ha[d] been apprised of facts which would place a reasonable person on notice that a potential claim exists."¹⁴ In essence, the discovery rule tolls the SOL until a victim is aware of their injury, but "it does not require the plaintiff to know the full extent of the injury."¹⁵ The common law discovery rule is a narrow one that makes it difficult for the victim to bring a claim years after the abuse occurred. In 2011, a 7-year discovery statute was added for gross sexual imposition and use of a minor in a sexual performance and runs from the date the victim "knew or reasonably should have known

⁹ *2019 SOL Report*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/sol-report-2019.

¹⁰ For more information on SOL reform in 2019, visit *2019 Summary of Child Sexual Abuse Statutes of Limitations (SOLs): Introduced, Signed into Law and State Laws by Category*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at www.childusa.org/2019sol.

¹¹ See *2020 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2020sol.

¹² See *2021 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2021sol.

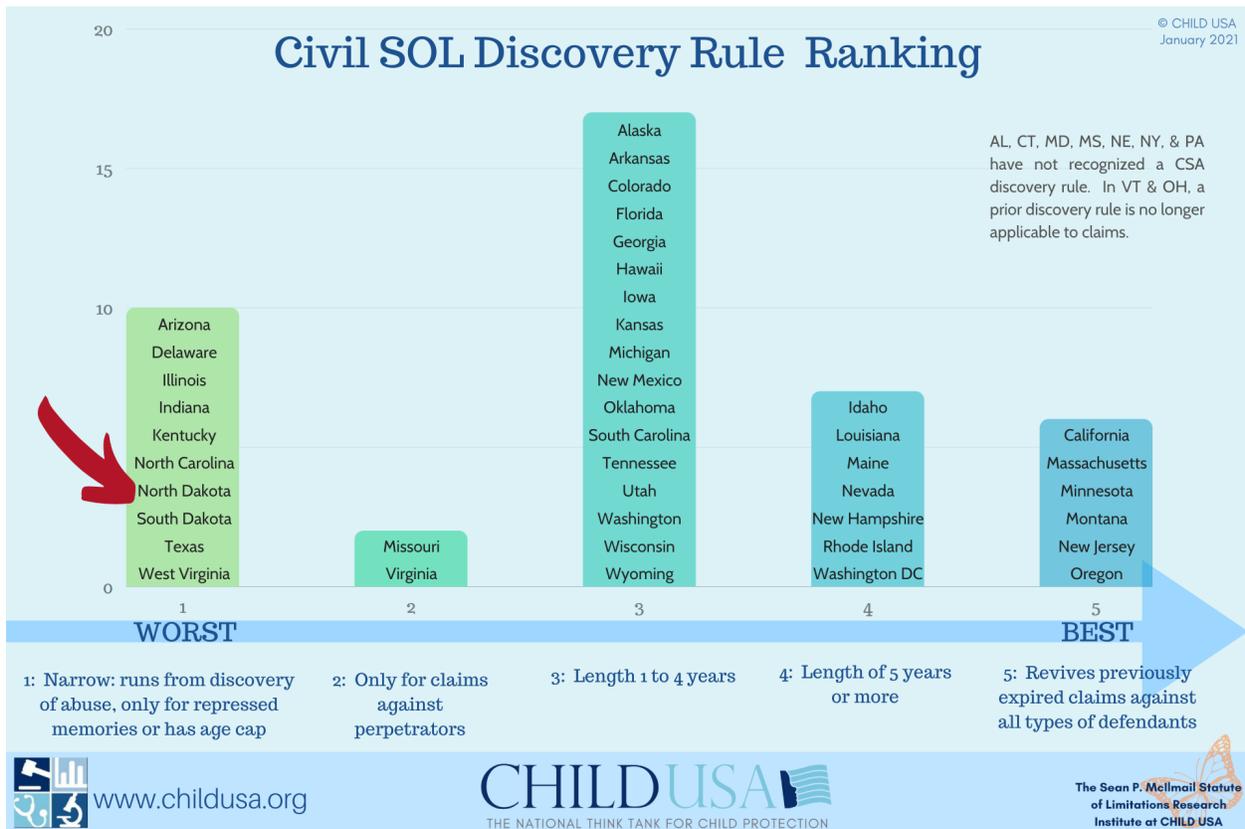
¹³ *Osland v. Osland*, 442 N.W.2d 907, 909 (N.D. 1989).

¹⁴ *Dunford v. Tryhus*, 776 N.W.2d 539, 542 (N.D. Dec. 15, 2009) citing *Wall v. Lewis*, 393 N.W.2d 758, 761 (N.D. 1986); see also *Peterson v. Huso*, 552 N.W.2d 83, 85-86 (N.D. 1996).

¹⁵ *Id.*, citing *Erickson v. Scotsman, Inc.*, 456 N.W.2d 535, 539 (N.D. 1990).

that a *potential* claim exists.”¹⁶ In 2015, the discovery statute was extended to 10 years. There are no decisions interpreting North Dakota’s discovery statute, so it remains unclear whether it is helpful to victims and the types of defendants that could be held liable pursuant to it. Further, there is no reason to believe it is any broader than the current common law discovery rule which has been interpreted to run from the time of injury/abuse. Another unknown with North Dakota’s current 10-year discovery rule is whether it gets tolled until the age of majority. For example, if a victim discovers they have a claim when they are 14, does the discovery rule run from that point giving them until age 24 or does the 10-year allowance begin running when they reach age 18, giving them until age 28? In practice, **North Dakota’s current discovery rule is unclear and has not been helpful to victims.** The result is claims have expired long before victims were ready to tell anyone they were abused.

The following graphic demonstrates how North Dakota ranks amongst other states regarding its discovery rule for civil child sex abuse claims. On a scale of 1-5, North Dakota’s current discovery rule ranks as one of the worst, as a 1. The “worst” discovery rules are ranked accordingly because they are narrow in their application and have not been very helpful to survivors. They are only helpful to a small subset of survivors who were either unconscious during the abuse, repressed their memories, or are younger than a specific cutoff age set by the state. North Dakota’s discovery rule running from the time of abuse, puts it squarely within this category.



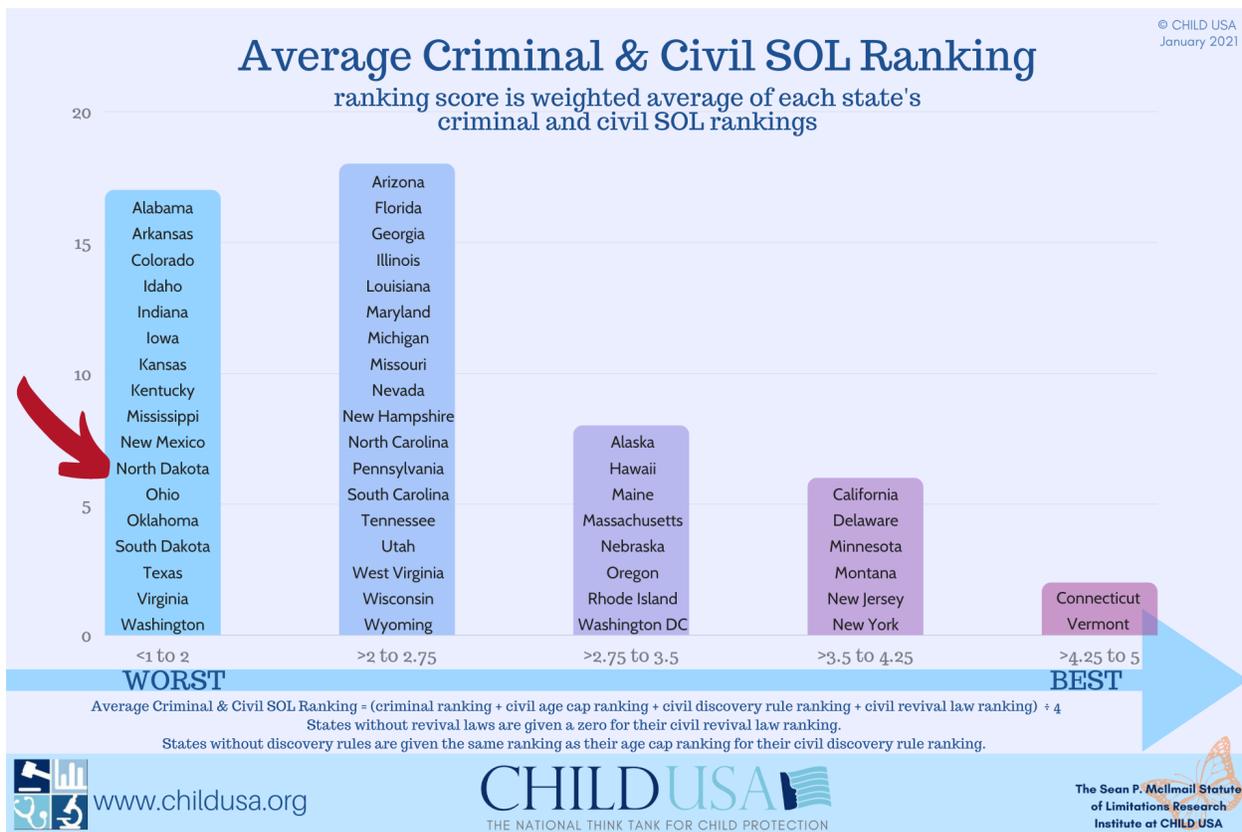
¹⁶ N.D. CENT. CODE ANN. § 28-01-25.1 (emphasis added).

North Dakota's criminal SOLs are not much better. The current criminal SOL for prosecuting child sex abuse crimes ranges between when a victim reaches age 21 and age 36, with applicable reporting and DNA rules, but historically the SOL was much shorter. In comparison, forty-two states already permit prosecution of some or all child sex abuse crimes at any time, meaning they have no criminal SOLs.

North Dakota currently has the shortest criminal and civil SOLs in the United States.

Which means that victims of child sex abuse in North Dakota have the least access to justice when compared with victims that were abused in any other state. Also, North Dakota has been shielding the perpetrators of horrific acts of sex assault on children from liability and prosecution for their crimes with unreasonably short statutes of limitations. The result is that the public has no idea who the predators are and these predators remain free to continue abusing children.

The graphic below depicts CHILD USA's overall average ranking of each state's criminal and civil SOLs. This ranking is based on each state's civil rankings (including age caps, discovery rules, and revival laws) and the criminal rankings of each state. On a scale of 0-5, overall, North Dakota ranks as a 0.75, making it the lowest ranking state.



Once again, we commend you for taking up the cause of child sex abuse victims and supporting this legislation. Amending the 10-year discovery rule to run from when a victim is informed by an attorney that he or she has a claim for sex abuse would significantly improve North Dakota's discovery rule. This change would bring much needed clarity to North Dakota's discovery rule

and give survivors more time to pursue justice. Survivors' claims would not expire until after they comes to terms with their abuse, consult with an attorney and potentially have the mental bandwidth needed to go to court and confront those responsible for their abuse. Further because discovery is an ongoing process for survivors, it would avoid the needless litigation that is common in other states over pinpointing a date in the discovery process during which discovery actually occurred pursuant to the statute.

North Dakota's children deserve SOL reform to protect them today and into the future. Expanding the discovery rule for civil child sex abuse claims is a positive step for North Dakota's children and families.

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

Sincerely,



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