

TESTIMONY FOR HOUSE BILL NO. 1384

House Judiciary Committee hearing 2/3/2021

GOOD MORNING CHAIRMAN KLEMIN and MEMBERS OF THE JUDICIARY COMMITTEE

My name is Tim O’Keeffe and I am a lawyer in Fargo with the Firm of O’Keeffe O’Brien Lyson and Foss. I reside in south Fargo in District 46. I am here to speak in support of HB 1384 as I believe it provides more certainty to the time limit to commence a civil claim for a victim of childhood sexual abuse.

As a lawyer, I am trained and educated in interpreting and applying phrases that are common in the legal world such as “knew or reasonably should have known” – I don’t think it is an overly complicated phrase – but it definitely is not the most objective phrase, nor one used commonly in our everyday conversation.

Tort law speaks frequently of the “reasonable person” when it comes to defining specific claims and in the idea of what consequences of actions are foreseeable. The idea of the someone knowing or should have known also suggests the concept of a reasonable person. The question is for you is whether a victim of childhood sexual abuse should be expected to act as a reasonable person would act. Better stated, how does a reasonable person that suffered a sexual assault as a child supposed to act, respond, report or know how to approach a legal claim?

To compare this to my work as a lawyer, I will compare this statute in its current form to the medical malpractice statutes in North Dakota. The SOL for a medical negligence claim is two years from the time the plaintiff knew or should have known of the malpractice. We often cite to the “discovery rule” I once had a client that had gall bladder surgery. He was a rancher—a real cowboy and tough guy. The surgeon left a small plastic bag inside my client’s abdomen. He suffered for many months, saw his doctor a couple times post-surgery complaining of this ongoing pain. Finally, he went to another doctor that took an XRAY and noticed a foreign object. By this time, there was quite an infection and mass developing.

Surgery was performed to remove the object and it was only at that moment, several months after the original surgery, that my client knew of the malpractice because another doctor told him that is what happened.

I see that example as an easy one to understand in applying the knew or should have known concept. Without a professional giving professional guidance, the client wouldn't have known he was a victim to malpractice.

In the case of a victim of childhood sexual abuse, when should they truly know they have a claim? If many aren't ready to come forward until much later in life, is it fair to have such a vague law. And even if an individual comes forward and goes to law enforcement, are they prepared to bring a civil claim at that time? The criminal courts can take time. It can't be easy psychologically to pursue a civil claim as well.

Many states have addressed these issues relative to sexual assault claims. Windows have opened on average for two years and states have often codified an age limit to bring a claim rather than a set period of time. For example, New York and New Jersey set an age limit of 55. Some states have codified a discovery rule where the victim can bring a claim within a period of time after they realize the impact of the abuse even if it is years later.

I support this Bill (and 1382) as it extends the time for a victim to bring a claim, allows a professional to provide guidance as to the potential claims and to put a time limit on the ability to bring the claim for each individual