

SB2282 – Sexual Assault Window

Good morning, Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today I am here to urge a DO PASS on SB2282.

Sexual abuse can happen to children and adults of any race, socioeconomic group, religion, or culture. **Every 68 seconds an American is sexually assaulted in the US. Every 9 minutes it is a child.** Women and men between the age of 12 and 34 are at the highest risk of sexual assault. If you are Native American, you are twice as likely to be sexually assaulted. A woman in college is more likely to be sexually assaulted than graduate.

ND Task Force on the Prevention of Child Sexual Abuse was established in 2017 and is tasked to identify, educate, and support groups who provide services to those who are victims of child sexual abuse.

The 2019 report showed the latest information:

1. In 2016, NDHHS responded to over 14,000 reports of child abuse and neglect.
2. In 2016, the AG reported 587 child sexual abuse victims.
3. In 2017, 774 children were referred to ND Children Advocacy Centers for Sexual Abuse allegations.
4. The ND Children's Advocacy Centers determined the lifetime cost for the sexual abuse of a female = \$282,734 and a male = \$71,691.
5. For those who were sexually abused, reported their abuse and received services the ND Children's Advocacy Center in 2017, the estimated lifetime expense is \$154,813,120. (That is for the 826 children who received services in 2017)

According to PCAND, 16% of children who are sexually abused come forward when they are children. Fewer than ½ of those will result in a conviction.

When victims come forward later in life, they are silenced due to the statute of limitations. SB2282 will give these victims a voice.

The North Dakota Legislature has not tasked this group to analyze sexual offenses for those 18 and older.

Like Senator Dwyer indicated, in 2021, the Attorney General's Office investigated 1,089 criminal sexual offenses. These offenses included sodomy, rape and rape with a foreign object, groping and commercial sex acts.

As these offenses increase, the length of time to prosecute these cases has also increased. In 2021, criminal sexual assault prosecution took 440 days to prosecute. Many prosecutors wait until the rape kit is processed and there is evidence of guilt to start the criminal prosecution. As you heard last week, North Dakota's crime lab is over 400 kits behind....some victims have waited over a year.

These delays have a detrimental impact on the current statute of limitations for civil remedy. As high-profile cases of sexual abuse and as survivors find the courage to report crimes and seek closure, statute of limitations can be a deterrent. Civil litigation can be a remedy for victims of sexual assault in several ways. Some of the ways that civil litigation can provide a remedy for victims of sexual assault include:

1. **Monetary compensation:** Victims of sexual assault can seek monetary compensation for damages such as medical expenses, lost wages, and pain and suffering.
2. **Injunctive relief:** Victims of sexual assault can seek court orders to prevent the perpetrator from continuing to engage in harmful conduct, such as restraining orders or orders requiring the perpetrator to undergo counseling or treatment.
3. **Holding wrongdoers accountable:** Civil litigation can help to hold wrongdoers accountable for their actions, which can provide a sense of justice and closure for victims.
4. **Public acknowledgment of the harm:** Civil litigation can provide an opportunity for the victim to have their story heard in court and for the wrongdoer to be publicly held accountable, which can help to validate the victim's experience and bring attention to the issue of sexual assault.
5. **Consequences for the perpetrator:** Civil litigation can also provide consequences for the perpetrator, such as fines, penalties, and even reparations that can be directed to the victim.
6. **Securing evidence for criminal proceedings:** In some cases, civil litigation can be a way to gather evidence that can be used in criminal proceedings against

the perpetrator, this can help to increase the chances of a successful criminal prosecution for other offenses.

Currently in North Dakota, these are the statute of limitations for sexual assault, abuse, and gross sexual imposition:

1. For Actions against individuals 18+: 2 years for Civil; 2 years for a misdemeanor, 3 years for a felony for Criminal (HB1145); forceable Rape is 7 years.
2. For Actions against Children in a Public School: 3 years for Civil, 21 years for Criminal.
3. For Actions against Children: 10 years for Civil; 21 years for Criminal; under 15 when a victim the SOL starts at 18 years old.
4. For Actions against Children in a state Agency: 3 years for Civil, 21 years for Criminal.

As the legislature looks at separate offenses throughout the years, the statutes of limitations have gotten skewed. **Normally, civil litigation does not commence until after the criminal complaint. This is because until the criminal complaint is completed, the defendant will plead the 5th amendment, so they do not incriminate themselves.**

SB 2282 gives the victim the opportunity to seek a civil remedy if they were unable to due to their criminal complaint taking too long, or the discovery of the abuse was outside the current statute of limitations.

Statutes of limitations can be detrimental to these cases as they place a time limit on the ability of the victim to seek legal remedy for the sexual assault. As the criminal statutes change and not the civil statutes, victims lose this ability. Today, I ask you to open the window to provide them with opportunity they have lost that was outside of their control.

Many ask whether this window should be open to all cases, or should SB2282 not be open retroactively?

Overall, access to the civil justice system is crucial for victims of wrongful conduct as it provides them with a means of seeking redress for harms suffered, holding wrongdoers accountable, and promoting important public policy goals.

The ex post facto clause is a provision in the United States Constitution that prohibits the federal government from passing laws that retroactively criminalize conduct, increase the punishment for a crime, or eliminate the defense of a crime. The ex post facto clause applies to criminal law and does not cover civil litigation.

In civil litigation, the statute of limitations, which is a time limit for filing a lawsuit, is not considered a retroactive law because it does not criminalize conduct or increase the punishment for a crime, but it sets a time frame for a legal action to be taken. The statute of limitations can be modified or extended by the legislature, but it doesn't affect the rights of individuals who have already been subject to the previous statute of limitations, unless they are still in the time frame of the previous statute.

What have other states done in the past few years to support victims?

In recent years, many states have changed their statutes of limitations for sexual assault in response to the widespread problem of sexual abuse and the recognition that victims may not come forward to report the abuse for many years, or at all. Currently, 27 states have made changes to their laws to protect victims. In 2023, 7 states have legislation pending to make additional changes. These changes have included:

1. **Eliminating statutes of limitations for sexual assault:** Several states, such as California, have eliminated the statutes of limitations for sexual assault, which means that victims can file a lawsuit at any time, regardless of when the abuse occurred.
2. **Extending statutes of limitations:** Some states have extended the statutes of limitations for sexual assault, which means that victims have more time to file a lawsuit. For example, New York extended the statute of limitations for criminal sexual assault from five years to 20 years.
3. **Creating "lookback" windows:** Some states have created "lookback" windows, which are limited periods of time during which victims who were previously barred from filing a lawsuit due to the statute of limitations can file a lawsuit regardless of how long ago the abuse occurred. This is what SB2282 will do.
4. **Introducing a "Romeo and Juliet" clause:** Some states have included a "Romeo and Juliet" clause, which is an exception to the statute of limitations for sexual assault cases where the perpetrator and the victim are close in age.

5. **Child Victims Act:** Some states have passed the Child Victims Act, which provides for a one-year window for victims to file civil claims for child sexual abuse regardless of the statute of limitations.

These changes to statutes of limitations for sexual assault are designed to provide more time for victims to come forward and to seek legal remedy for the abuse they have suffered. The changes also reflect the recognition that victims may not be ready to come forward for many years, or at all, after the abuse occurred and that it is important to provide them with a way to seek justice.

Who will be against changes to this statute of limitations?

Perpetrators will not be happy to change this statute. Why? Because when perpetrators are not held accountable, they will continue to offend. Numbers of victims will continue to grow, and the state of North Dakota will continue to pay for mental health services for victims. Over 40% of perpetrators are people the victim knew or was a family member or close friend.

Insurance Carriers: Many organizations and institutions pay premiums to cover employee misconduct. These carriers will not be happy with these changes as they will not pay out monetary sums to victims in North Dakota.

Organizations and Institutions who have allowed the misconduct: In civil remedies, organizations and institutions who had knowledge of the misconduct can also be held accountable. These groups are only held accountable if they had knowledge of the sexual abuse but did not do anything to support the victim, but protect the perpetrator.

Perpetrators and institutions have benefitted from short SOLs and until recently, most states, including North Dakota, have shut down most cases. That is a major reason we knew so little about the epidemic of child sex abuse.

Holding employees accountable for their actions can serve as a deterrent for negligent behavior and can hold individuals responsible for their actions. This can also provide a sense of justice for the victim and ensure that the employee is held responsible for the harm they have caused.

Organizations can also be held liable for the actions of their employees. This is because organizations have a responsibility to ensure the safety and well-being of

their employees and those affected by their actions. Holding organizations liable can also ensure that they take steps to prevent similar incidents from occurring in the future.

In general, it is important to consider both the actions of the individual employee and the actions of the organization when determining liability. The employee's actions should be evaluated to see if they are in violation of any laws, policies, or regulations, and if the organization had proper oversight and monitoring in place. The organization's liability should be determined based on whether it failed to provide a safe working environment, failed to properly train or supervise its employees, or failed to take appropriate action when it knew or should have known about the employee's behavior.

It is also worth mentioning that in some cases, both the employee and the organization can be held liable for the harm caused, depending on the specific circumstances of the case.

Less than 4% of all sexual assaults happen within a faith-based organization. In North Dakota, a 2020 report resulted in a list of clergymen who could have sexually assaulted children within their parish. The Attorney General determined that most perpetrators had died, thus no criminal charges were filed.

Civil claims cannot be filed against individuals who have been deceased more than 1 year.

Overall, civil litigation has had a financial impact on the Catholic Church in other states, but it has not bankrupted the Church. The Church has made significant changes to its policies and procedures to prevent sexual abuse, and the Church continues to face ongoing litigation and public scrutiny.

In recent years, new allegations have surfaced. Some allegations have been within the last year.

Under Chapter 50 of the North Dakota Century Code, clergy are required to report child abuse and neglect when they are not acting in a spiritual capacity.

For entities like the Boy Scouts of America, their chapter 11 filing includes a cap on child sexual abuse claims. Once the allocated funds are gone, claims will cease.

North Dakota statute has implemented liability caps on charitable organizations and municipalities and state agencies. These caps would come into play with any allegations against these entities.

Victims of sexual abuse go through so many ups and downs. Their worlds are flipped upside down, but they choose to stand up and face their perpetrator. They do this to remove this individual from the streets so they cannot harm another. They are the bravest of the brave. Today, I ask you to be brave. To support victims and show them you are willing to stand up and support them.

These victims behind me deserve your support and willingness to stand with them to remove these perpetrators. By voting DO PASS on SB2282, you are showing them they matter. Statute of Limitations are set by the legislative body. I ask you today to be their voice and pass SB2282.

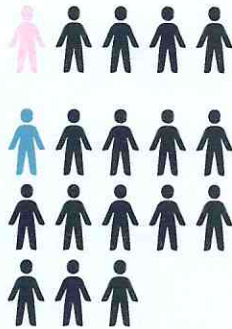
Thank you for the opportunity to speak today, I look forward to answering your questions and working with the committee to support victims of sexual assault, abuse and gross sexual imposition.

Jaci Hall
Executive Director
North Dakota Association for Justice

CHILD SEX ABUSE & THE LIMITS OF THE CRIMINAL SYSTEM

About one in five girls and one in 13 boys will be sexually abused before they turn 18*

*Includes contact abuse only
Source: CHILD USA



Fewer than 20% of sexual crimes are referred to prosecution and only 1/2 of those result in a conviction

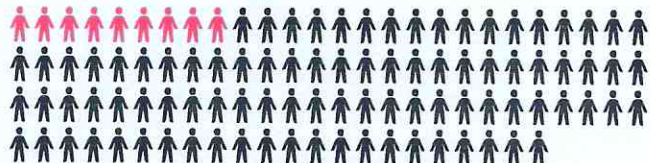
Out of 100 reported cases:
Less than 20 go forward to prosecution



Out of these, only 18 continue to trial after review by the prosecution



Half of cases that go to trial result in a conviction or guilty plea



Source: Block & Williams, The Prosecution of Child Sexual Abuse (2019)

The criminal system keeps many from being held accountable

- Lesser included offenses and plea deals limit discovery into the actions that failed to protect children
- Institutions and organizations that knew about and perpetuated abuse do not face incarceration or penalties.
- Executives rarely face jail time.

Child sex abuse (CSA) cases are notoriously difficult to prosecute.

- Physical evidence of the assault is present in fewer than 5% of victims
- Cases rely heavily on the children's coherent statements of memories of a traumatic event
 - Children are forced to repeatedly disclose their experiences of abuse over a period of time, and they may deny, recant, and later restate that abuse did actually happen

Sources: Block & Williams, The Prosecution of Child Sexual Abuse (2019) and London, Bruck, Ceci, & Shuman (2007)

Victims who disclose later in life are effectively silenced by the criminal statute of limitations:

- The average age at the time of reporting child sex abuse is about 52 years
- Child sex abuse acts that occurred years ago may have been considered misdemeanors with a statute of limitations of one year

