

**2021 HOUSE JUDICIARY**

**HB 1382**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

HB 1382

2/3/2021

Relating to limitations on actions alleging childhood sexual abuse; and to provide an expiration date.

**Chairman Klemin** called the hearing to order at 8:30 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter.

### Discussion Topics:

- Time limit for potential claim of child abuse
- Protecting Childrens civil liberties

**Rep. Schauer:** Introduced the bill. 8:34

**Jeff Dunfore, San Diego:** Testimony #5139 8:37

**Ted Becker, Minneapolis:** Testimony #4211

**Paul Hessinger, San Francisco:** Testimony #4828

**Katherine Robb, Child US Advocacy:** Testimony # 4596 8:55

**Tim Lennon, Tucson, Az:** Testimony #5146 9:02

**Dr. Chris Johnson, Rape and Crisis Center, Fargo-Moorhead:** Testimony #4710 9:09

**Leslie Burnette, West Fargo, ND:** Testimony # 4756

**Mark Jorritsma, Family Policy Alliance of ND:** Testimony #5043 9:19

**Shane Goettle, State Association of Nonpublic Schools:** Testimony #5124

**Cary Silverman, American Tort Reform Association:** Testimony # 5079 9:34

**Additional Written Testimony: #4287, # 4733, #5145, #5140, #5061**

**Chairman Klemin** closed 9:44AM.

DeLores D. Shimek, Committee Clerk

Source - North Dakota Century Code, Annotations, 1991, Vol. 5 + Vol. 5 Supplement 200.5

ran from time of commission of each act. Fox v. Higgins (1967) 149 NW 2d 369, cert. denied (1967) 389 US 873, 19 LEd2d 153, 88 SupCt 160.

#### Discovery of Injury.

The purpose of the discovery rule is to prevent the injustice of barring a claim before the plaintiff could reasonably be aware of its existence. Thus, the focus is upon whether the plaintiff has been apprised of facts which would place a reasonable person on notice that a potential claim exists. It is not necessary that the plaintiff be subjectively convinced that he has been injured and that the injury was caused by the defendant's negligence. Wall v. Lewis (1986) 393 NW 2d 758.

Where plaintiffs were advised by an attorney that they had a potential malpractice claim, plaintiffs as a matter of law "discovered" the injury, its cause, and the defendant's possible negligence as of that date. Wall v. Lewis (1986) 393 NW 2d 758.

#### Diversity Action.

Malpractice action brought in federal district court of Minnesota was barred by statute of limitations since Minnesota follows the general rule that procedural law of the forum state applies, and that statutes of limitation are procedural. Cuthbertson v. Uhley (1975) 509 F2d 225.

#### Extension of Limitation Period.

Where trial court found that the severe emotional trauma experienced by plaintiff resulted in her being unable to fully understand or discover her cause of action for assault and battery based on sexual abuse she experienced as a minor during the applicable statutory limitations period, court did not err in applying discovery rule to extend period of limitations. Osland v. Osland (1989) 442 NW 2d 907.

In no case, except where there is fraudulent concealment, will "the limitation of an action be extended beyond six years of the act or omission of alleged malpractice by a nondiscovery thereof." Wheeler v. Schmid Labs., Inc. (1990) 451 NW 2d 133.

#### False Imprisonment.

False imprisonment is considered a continuing tort which commences at the time of the false arrest and continues until the unlawful detention ceases. O'Fallon v. Pollard (1988) 427 NW 2d 809.

The time specified in the statute of limitation for a false-imprisonment action commences to run from the termination of the plaintiff's incarceration, irrespective of whether or not related criminal proceedings

have been concluded. O'Fallon v. Pollard (1988) 427 NW 2d 809.

Where the plaintiff was released on bond shortly after his arrest, the two-year period began to run at that time, and because his release from incarceration occurred more than two years before he filed his lawsuit against a city, city police and sheriff, his complaint was barred by the statute of limitation. O'Fallon v. Pollard (1988) 427 NW 2d 809.

#### Federal Action.

This statute of limitation, which applies to actions involving assault, batteries and the like, more specifically encompasses the sorts of actions which concerned Congress in enacting 42 U.S.C. § 1983; therefore, this section applied to plaintiff's 1983 action. Kessel v. Schaff (1987) 697 FSupp 1102.

#### Fraudulent Concealment of Cause of Action.

In an action against physicians for alleged assault and malpractice resulting from the removal of certain organs from plaintiff's body, where plaintiff did not discover the removal until a subsequent operation six years after the removal, it was at that time that the one-year limitation was set in motion and plaintiff's failure to initiate action within one year from the date of the second operation barred her from recovery. Linke v. Sorenson (1960) 276 F2d 151.

#### Loss of Consortium.

A cause of action by a husband for loss of services, society, and companionship of his wife, resulting from injuries to her through the wrongful acts or negligence of a surgeon, arose at the time he was deprived of such services, society, and companionship. Milde v. Leigh (1947) 75 ND 418, 28 NW 2d 530, 173 ALR 738.

#### Malpractice Action.

Limitation period commences to run against malpractice action from time act of malpractice with resulting injury is, or by reasonable diligence could be, discovered. Iverson v. Lancaster (1968) 158 NW 2d 507.

As used in this section, the term "malpractice" refers to the nature of the subject matter of the action and not to the form of remedial procedure, whether it be in tort or contract. Johnson v. Haugland (1981) 303 NW 2d 533.

The rule concerning the time at which a cause of action for malpractice accrues to start the running of the statute of limitations is that the limitation period commences to run against a malpractice action from the time the act of malpractice with resulting in-

## N.D.. Child Abuse Statute 28-01-25.1

The statute reads "A claim for relief resulting from childhood sexual abuse must be commenced within ten years after the plaintiff knew or reasonably should have known that a potential claim exists resulting from alleged childhood sexual abuse."

A potential claim exists when you have been **notified by an attorney that a potential claim exists (Wall vs Lewis 1986)**. Or simply file per se a complaint and the potential tolling claim exists then.

The time restriction is 10 years after being attorney advised a potential claim exists.

All N.D. child abuse victims could file a civil case today as the statute has been in effect only 6 years.



## Supreme Court of North Dakota.

Jeffrey Allen DUNFORD, Plaintiff and Appellant v. Dr. Trueman E. TRYHUS, Jr., Defendant and Appellee.

No. 20090178.

Decided: December 15, 2009

11] Dunford inquired as to the applicable statute of limitations for sexual abuse claims in 1988 and wrote a letter to Tryhus in the early 1990s. Dunford's letter confronted Tryhus and listed problems he was having because of the abuse. Dunford also has experienced nightmares since he was a child, and he reports that by the **mid-1990s he knew the nightmares were caused by the alleged abuse. This evidence establishes Dunford discovered his injury no later than the mid-1990s.**

[¶ 12] Drawing all inferences in favor of Dunford, no dispute exists that he **discovered his injury** in the mid-1990s and that he commenced this action in February 2008. Because Dunford did not file his sexual abuse claim within two years of discovering his injury, the district court did not err in granting Tryhus' motion for summary judgment.

## Adapted from Mn. statutes

### CIVIL Child Abuse

28-01-25.1. Limitation on actions alleging childhood sexual abuse.

Notwithstanding section 28-01-25, a potential claim for relief resulting from childhood sexual abuse may be commenced at any time. For purposes of this section, "childhood sexual abuse" means any sexual act committed by the defendant against the plaintiff which occurred when the plaintiff was under eighteen years of age or which would have been a violation of chapter 12.1-20.

**"Defendant" includes a natural person, corporation, Limited Liability Company, partnership, organization, association, or other entity.** Plaintiff need not establish which act in a continuous series of sexual abuse acts by the defendant caused the injury. This section applies to an action for damages commenced against a person corporation, organization, or other entity that is a cause of the plaintiff's damages.

Notwithstanding any other provision of law, in the case of alleged sexual abuse of an individual under the age of 18, if the action would otherwise be time barred under a previous version of North Dakota Statutes, section 28-01-25.1, or other time limit, an action for damages against a defendant may be commenced at any time.

Easier fruit for Attorneys -  
+  
Bigger



Mr. Chairman!

My name is Ted Becker. I was born in 1938 at Mandan and grew up at Selfridge.

I was sexually abused by a priest at Selfridge when I was about 10. Five other boys told me they were also sexually abused by the same priest. All are now dead. The organization for which the priest served presented them no accountability for what happened to them. I consider myself their voices. The abuse happened to me for several years. The worst memories I have of this time in my life are of sleeping with the priest. He served as a priest at a mission at Shields and would travel from Selfridge to the mission early Sunday mornings to say mass. I was an altar boy. He would get permission from my parents to have me sleep overnight so as not to disturb my parents by picking me up early in the morning. My parents, like the vast majority of parents in the community held priests above reproach. It was believed that they were just one step below God.

You cannot begin to imagine the abuse. During my lifetime the abuse manifested itself during my sleep with such things as sensing horrid tastes in my mouth, smelling bad breath in my nostrils, feelings of tugging on my penis and so on.

I lived 60 years of my life experiencing these horrible manifestations during my sleeping hours, not understanding them and not knowing what was causing them.

Further, I lived 60 years of my life more often **NOT** trusting than trusting. I had no clue as to why I was like this other than that was "just the way I was."

About 10 years ago when the priest sexual abuse issue began to become widely public, I began to be aware of a marked increase in the frequency of these manifestations. With the loving encouragement of my children, when I was about 71-years old I sought counseling. Early on in the two-years I went to counseling I was diagnosed with Post Traumatic Stress Disorder, the same disorder which many soldiers returning from battle as well as rape victims experience. Today I am telling you of some of the sexual abuse done to me by the priest. Telling you is part of my healing. My healing will continue until I die, though these sores do not heal up 100%. Scars remain. They can easily be scratched open.....like they are at this very moment.

If bill 1382 is given a do-pass, that would be a step in the right direction for the abused. I believe that any of the proposed legislations, 1382, 1384 and 1387, will give courage to the abused to step forward and among other things to seek help. If one of the "other things" is to pursue litigation, the abused would be the one to decide whether or not to do so. If another is to seek counseling, that would be even better. It was better for me. I ask you to pass any of the proposed legislations to give the abused a chance to begin their healing journey.

In closing, please allow me to pose a question to this committee! Will you do the right thing to make sure this legislature passes this much-needed legislation before I die? It is absolutely time for the organization which allowed and continues to allow this abuse to happen to be held accountable in the public arena.

Thank you, members of the Judiciary Committee, for giving me the opportunity to continue to heal!



Testimony for North Dakota House Bill 1382 by Paul Hessinger, Feb 3, 2021

"My name is Paul Hessinger. I was born and raised in Bismarck.

In 1967, two other boys and myself were sexually abused by two priests in New Leipzig, after they gave us alcohol. We were about 16-years-old. It was shocking and damaged my ability to trust. I will never forget being pawed and groped sexually by one man. Nor the feeling of his five o'clock shadow scraping against my face as he tried to kiss me. And the hopeless feeling as he was trying to tear off my clothes.

I never told my parents because I just thought it would kill them, as they were very staunch Catholics and very good Christians. I also thought my father might do something crazy or might kill them. Also, I suspected they would never forgive themselves.

I fell into drugs and alcohol for over 15 years, and bouts of depression, deep anxiety. I went to therapy and found I had PTSD, anxiety, insomnia, urticaria and many other things with which I have to struggle.

My pain and injustice have not gone away in 53 years. Why do abusers get a free pass after statutes run out? What justice or common sense is that?

People say a lawsuit would be damaging to a survivor. I guarantee you the long years of pain and suffering due to injustice and frustration of being blocked at every turn are FAR more damaging. Where could I go in 1967 to share that I have been sexually abused?

I hope you can see this through my eyes, and the eyes of survivors so that the legislature and the courts can begin to create a system of justice, rather than inadvertently protecting perpetrators and allowing injustice, pain and suffering to continue without an end in sight.



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. 1382, 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; and to provide an expiration date.

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 1382, which will increase access to justice for victims of childhood sexual abuse and enhance protection for children in North Dakota. If passed, this legislation will make North Dakota a leader in the fight to protect children's rights.

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](http://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 1382, which will open a 2-year revival window during which all claims, previously time barred by the prior SOL, will be revived. This will allow all past victims of child sex abuse to come forward and pursue civil justice while the



window is open. This will also greatly reduce the present danger to children in North Dakota by educating the public about child sex abuse and exposing previously unknown predators in your midst. There is an epidemic of child sexual abuse. Changing the law surrounding the issue will push North Dakota forward into a better future and in line with 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. Window Legislation Serves the Public Good by Preventing Future Abuse and Restoring Justice to Victims**

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**. Most claims expire before the victims are capable of getting to court. This bill would protect the children of North Dakota by making it possible for victims to come forward and identify their perpetrators in a court of law.

As well as providing already-existing victims of abuse a path to justice, SOL reform also protects society at large. By allowing past-expired claims to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. Given the ways in which abuse impacts children into their adult lives, preventing further abuse only serves to help society - by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children to grow into healthy adults. SOL reform also educates the public about the danger of child sexual abuse. When predators are exposed, particularly high-profile ones like Larry Nassar and Jeffrey Epstein, the press and media industry publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children. By shedding light on the problem, parents and others are better able to identify abusers and prevent further abuse. They are also able to better educate children to be aware of the signs of grooming and abusive behavior and create more social awareness to help keep kids safe.

SOL reform, and window laws in particular, validate victims and shift the cost of abuse to the perpetrators and enabling institutions, placing them on notice that the state no longer stands with them - but with their victims.

## HOW WINDOWS HELP EVERYONE



### **Identifies previously unknown predators**

to the public, shielding other children from future abuse.



### **Shifts the cost of abuse**

from the victims to the perpetrators and the institutions that enabled them.



### **Educates the public**

about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.



[www.childusa.org](http://www.childusa.org)

**CHILD USA**  
THE THINK TANK FOR CHILD PROTECTION

The Sean P. McInnis Statute  
of Limitations Research  
Institute of CHILD USA

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 opening a window, access to justice for past 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 window legislation:**

- 1) **A window *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, including North Dakota, have shut down most cases. That is a major reason we knew so little about the epidemic of child sex abuse.



**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.

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.**<sup>1</sup> 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.



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 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.

<sup>1</sup> 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>.

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 Opening a Revival Window for Expired Claims**

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> In January of 2021 alone, 19 states have already introduced SOL reform bills.<sup>5</sup>

The graphic below provides a national overview of SOL reform for child sex abuse and details the states that currently in 2021 have the best criminal and civil SOL laws. Notably, North Dakota is not on this list as it has the worst SOLs for child sex abuse.

---

<sup>2</sup> 2019 SOL Report, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/sol-report-2019](http://www.childusa.org/sol-report-2019).

<sup>3</sup> 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](http://www.childusa.org/2019sol).

<sup>4</sup> See *2020 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2020sol](http://www.childusa.org/2020sol).

<sup>5</sup> See *2021 SOL Summary*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/2021sol](http://www.childusa.org/2021sol).

## THE BEST CHILD SEX ABUSE STATUTES OF LIMITATION BY JURISDICTION

**42**

States & DC

### NO CRIMINAL SOL FOR SOME OR ALL CSA CRIMES

All States and DC eliminated SOLs except IA, MN, NV, NH, ND, OH, OK, OR

**12**

States

### NO CIVIL SOL FOR SOME OR ALL CSA CLAIMS

AK, CT, DE, FL, IL, ME, MN, NE, NV, NH, UT, VT and Guam

**17**

States & DC

### REVIVAL OR WINDOW LAW FOR EXPIRED CIVIL CLAIMS

AZ, CA, CT, DE, GA, HI, MA, MI, MN, MT, NJ, NY, NC, OR, RI, VT, WV, DC and Guam

*As of January 1, 2021*



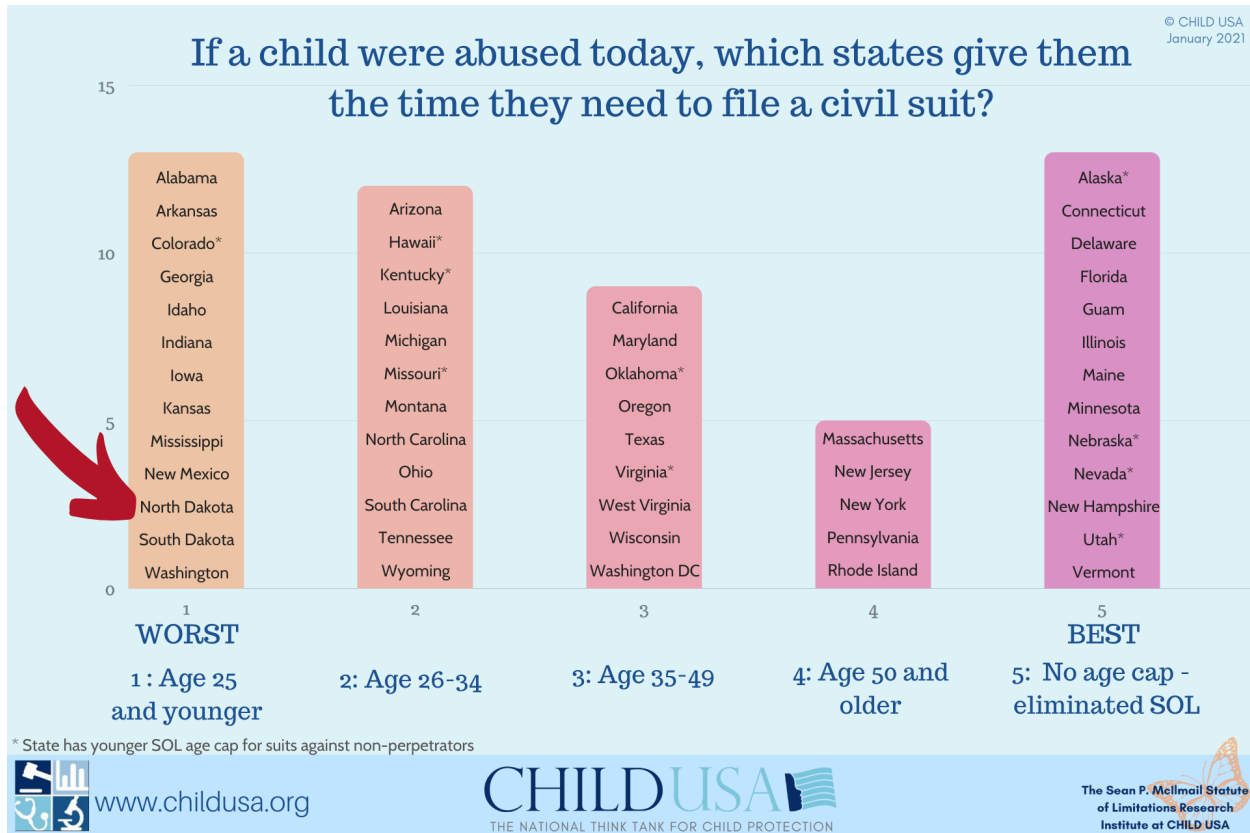
[www.childusa.org](http://www.childusa.org)

**CHILD USA**  
THE THINK TANK FOR CHILD PROTECTION

The Sean P. McIlmail Statute  
of Limitations Research  
Institute at CHILD USA

North Dakota's civil SOL for child sex abuse is currently the shortest in the nation, expiring after a survivor reaches age 19. There is a discovery rule which could extend the SOL for some survivors until 10 years after they "knew or reasonably should have known that a potential claim exists." In practice though, this discovery rule has not been helpful to victims in North Dakota, and 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 age cap for civil child sex abuse claims.



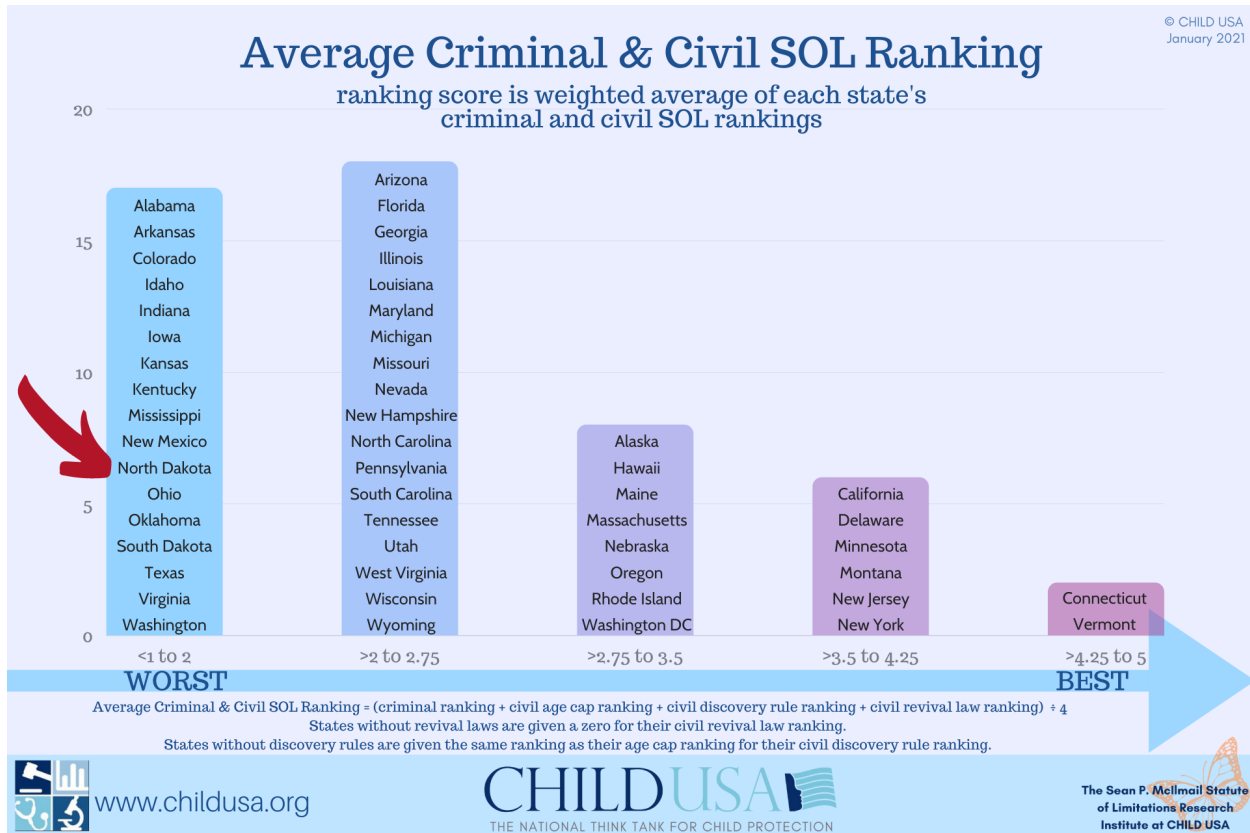
North Dakota's criminal SOLs are not much better. The current criminal SOL for prosecuting child sex abuse crimes ranges between when a victim reaches age 21 and age 36, with applicable reporting and DNA rules, but historically the SOL was much shorter. In comparison, forty-two states already permit 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.





For past crimes, if the time limit for prosecuting perpetrators has already expired, there is nothing that can be done on the criminal side to help victims access justice. It is unconstitutional to revive expired criminal SOLs. *Stogner v. California*, 539 U.S. 607 (2003). There is literally only one way to restore justice to these adult victims of child sex abuse and that is to revive their expired civil claims that were barred by unfairly short SOLs. In other words, to fix the wrongs done to them, they deserve the opportunity to file civil lawsuits if they so choose.

At this point, seventeen states, Washington D.C. and Guam have enacted revival laws for child sex abuse claims – which revive expired civil claims that had been blocked by unfairly short SOLs.<sup>6</sup> The states that have revived expired civil SOLs have learned about hidden child predators while empowering victims. These revival laws do not yield a high number of cases,<sup>7</sup> but provide long-overdue justice to older victims of child sex abuse. The most popular method for revival has been with a window like the one HB 1382 is proposing.

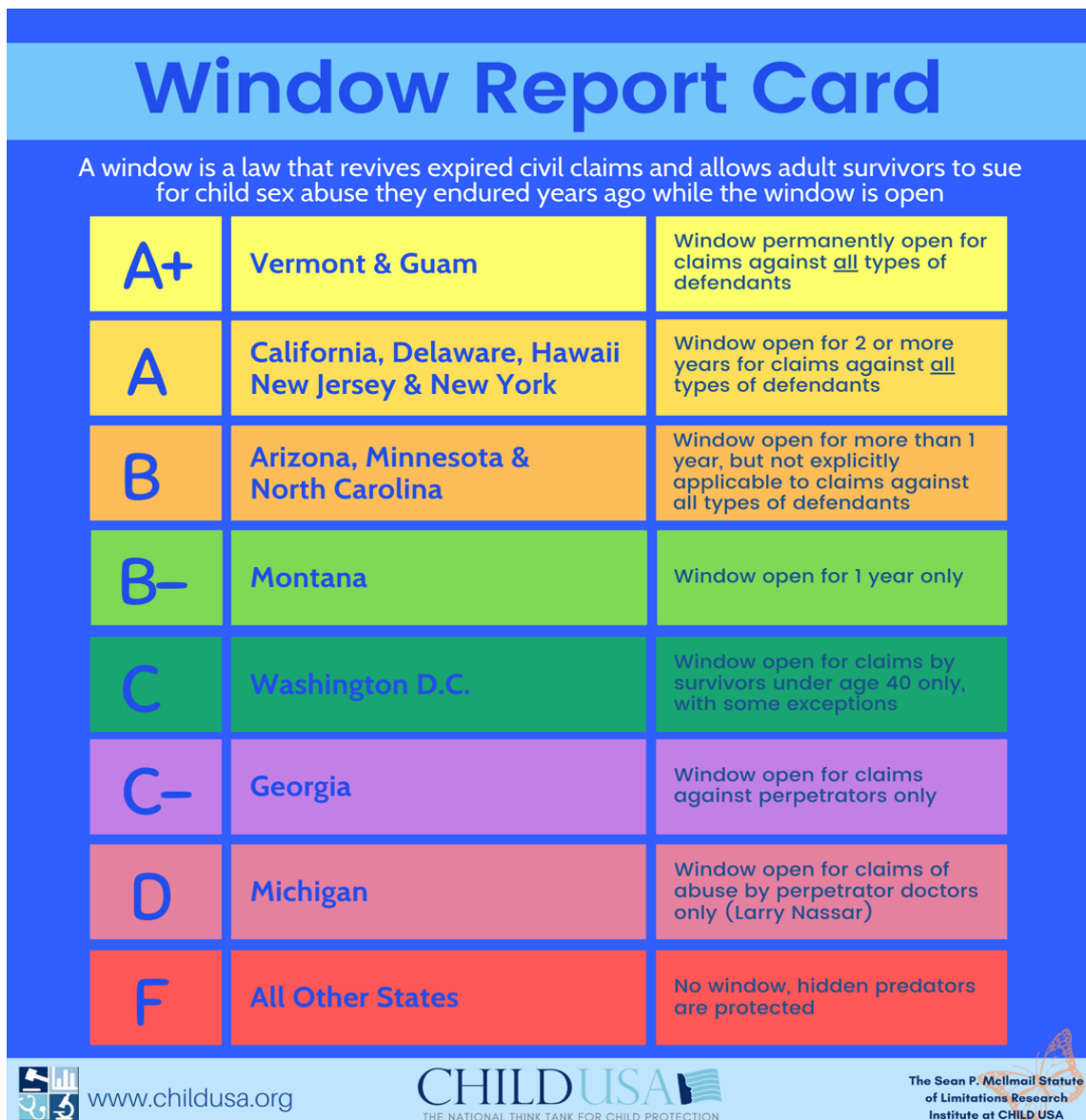
Revival windows for child sex abuse have varied in length and by the types of defendants that are permitted to be sued. The absolute best windows are Vermont's and Guam's which are permanently open and completely revive all expired claims. The next best windows are in California, Delaware, Hawaii, New Jersey and New York because the windows are open for 2 or

<sup>6</sup> For a comprehensive overview of SOL revival laws, see *Revival and Window Laws Since 2002*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at <https://childusa.org/wp-content/uploads/2020/05/1.18.21-Civil-Revival-Laws-in-17-States-and-DC-Since-2002.pdf>.

<sup>7</sup> See *The Relative Success of Civil SOL Window and Revival Statutes State-by-State*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at [www.childusa.org/law](http://www.childusa.org/law).

more years and apply to claims against any type of defendant: perpetrators, individuals, institutions and the government. The states that have revived expired civil SOLs against all parties – not just predators – have learned more about hidden child predators while empowering victims. The less effective window is Georgia's, which only revived claims against perpetrators and not against the institutions that were negligent or actually aware of abuse and failed to stop it. Institutional child sex abuse is a systemic problem occurring in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen, by looking the other way or covering up abuse when it's reported, the children these institutions serve remain at risk today. The worst window is Michigan's, which only helped victims of Dr. Larry Nassar and left a gaping hole of injustice for all other Michigan victims of child sex abuse.

The following graphic is a revival window report card, grading each state's window based on how helpful it is to survivors and to society by exposing hidden predators within the states.



Once again, we commend you for supporting this legislation, which is desperately needed to help survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. North Dakota's children deserve SOL reform to protect them today and into the future. Opening a window for expired 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,

A handwritten signature in dark ink, appearing to read "Marci A. Hamilton". The signature is fluid and cursive, with a long horizontal line extending to the right.

Marci A. Hamilton, Esq.  
Robert A. Fox Professor of Practice  
Senior Resident Fellow, Program for Research on Religion  
University of Pennsylvania  
marcih@sas.upenn.edu  
(215) 353-8984

A handwritten signature in dark ink, appearing to read "Kathryn Robb". The signature is bold and cursive, with a long horizontal line extending to the right.

Kathryn Robb, Esq.  
Executive Director  
CHILD USA Advocacy  
3508 Market St., Suite 201  
Philadelphia, PA 19104

## **Oral Testimony of Tim Lennon**

February 3, 2021

### **Greeting**

Honorable Chairman and Honorable Members of the House Judiciary Committee, thank you for the privilege of speaking with you today. I testify in support of House Bill 1382.

### **My Story**

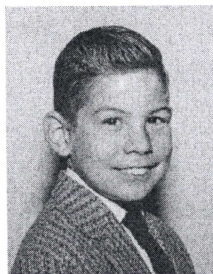
My name is Tim Lennon. I am a survivor of rape and sexual abuse when I was twelve years old in Sioux City, Iowa, about 1960.

My story is relevant to House Bill 1382 as memories of the rape remained buried for fifty years.

I was sexually abused for several months by my parish priest and violently raped. The abuse stopped when the predator got caught abusing another child; he was then removed and transferred to another assignment.

Memories of the rape and sexual molestation remained buried until 2010, fifty years later.

Picture of me at about the time of the rape and sexual abuse.



### **How do memories surface?**

My rape and sexual abuse are so horrific that I buried the memories for decades. Many other child victims of sexual violence suppress their memories in drugs, alcohol, or even suicide. Sadly, some are so emotionally damaged that they are unable to speak. This is why we refer to ourselves as survivors—we survived.



In my case, when my twin daughters turned twelve, it evoked memories of when I was twelve. These memories, in turn, caused many PTSD troubles. Various events can prompt memories, such as news stories, therapy, or locations.

### **Child sex abuse is a lifelong harm and injury**

Sexual violence is equivalent to murder. The damage is significant—there is no statute of limitation of harm suffered by other survivors and me. I am 73; every day, I suffer from PTSD, depression, low self-esteem, and anxiety. Every day.

What gets me up in the morning is the anger at what happened to me and my compelling drive to make sure that what happens to me does not happen to another child.

### **SOL Reform protects the community**

Predators abuse for decades, some abuse hundreds of children until their eighties. If they sexually abused one child, we know that they abused a dozen children previously and know that they will harm dozens after.

If the SOL timeframe is limited and the victims take decades to come forward, this just hands violent sexual predators a 'get out of jail card.' This, in turn, allows continued abuse without consequence, and the community is not safe.

#### **Review of child sex abuse victims:**

30% or more victims never come forward and report abuse

Memories of sexual violence are buried for decades where some victims of bury memories for a lifetime using drugs and alcohol

Many victims commit suicide (the fortunate, like myself, are survivors)

In summary, child sex predators are not held accountable. The community is not safe. I am a parent, and it horrifies me to think that weak SOL laws may endanger my children and the children of every community.

### **My Advocacy**

I am the President of the Board of Directors of the *Survivors Network of those Abused by Priests*, ***SNAPnetwork.org***. SNAP is a peer network of

over 30,000 survivors and supporters and is a 501(c)3 non-profit. SNAP was founded thirty years ago. The mission is to support survivors, protect the vulnerable, and hold predators accountable.

I have been an active volunteer and national leader with SNAP for the previous ten years. Most of the time, I acted as a correspondent for the SNAP website. I have spoken to or written to many thousands of survivors over the years. As a member of SNAP leadership, I have engaged with several state legislators to advocate reform of SOL laws in Iowa, South Dakota, Arizona, and Louisiana.

I also traveled to the Vatican twice as part of a SNAP team to call for reform; the latest visit was one year ago. I have been interviewed by national and international newspapers, TV network news, magazines, radio, and hundreds of other media outlets.

I have a blog with a considerable amount of information about my story and background. I have other supporting material that is helpful for other victims and survivors. <https://standupspeakup.org/>

I presently live in Tucson, Arizona. I welcome all questions.

Tim Lennon

President

SNAP

415 312 5820

[tlennon@SNAPnetwork.org](mailto:tlennon@SNAPnetwork.org)

ND House Bill 1382  
Dr. Christopher Johnson, CEO  
Rape and Abuse Crisis Center of Fargo Moorhead  
February 3, 2021

#### Professional Background

- Licensed Social Worker, case management with children and families
- Administration, addition and mental health
- Administration, Homeless youth services
- Executive Leadership, Domestic and sexual violence
- All roads seem to lead to unresolved trauma

#### North Dakota Taskforce on the Prevention of Child Sexual Abuse

- Primary Prevention of child sexual abuse
- Strengthening the intervention for child sexual abuse victims
- Strengthen the network of child sexual abuse trauma informed services
- Strengthen programming for child sexual abuse offenders

#### Rape and Abuse Crisis Center of Fargo Moorhead

- Annual service data: adults and children
- Child data: total served, DV and SA, court prep
- Red Flag Green Flag
- Child sexual abuse victims
- Child sexual abuse survivors
- Challenges for survivors

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

RE: HB 1382

Leslie Brunette Testimony: **IN SUPPORT OF HB 1382** – SOL Reform

Good morning, thank you for the opportunity to share my authentic voice **in support** of HB 1382.

My name is Leslie Brunette, current resident of West Fargo, ND.

I am survivor of childhood sexual abuse, timeline 1977-1987, Abuser: my father. For over 2 decades I have been a passionate advocate of preventing child sexual abuse in ND. Today, I am asking you to vote **in favor of SOL reform**.

WHY: Your **YES** will give the restorative gifts of voice, agency\*, closure, and justice to victims previously unable to share their story. \*Agency defined as the capacity of individuals to feel in control of one's own life. This is often traumatically stolen from us as victims of childhood sexual abuse!

Every story deserves to be heard and every victim deserves the **CHOICE** to share their story **WHEN** they are ready. Some may never be ready to share and that's ok. It is **not acceptable** however to prescribe an "expiration" date for our stories. **Passing this bill** will be the hope infusing invitation some victims have been hopelessly waiting for!

My story was heard as a child and my perpetrator was put in prison ending the sexual abuse. The memories exist to this day; however, the intensity of the anger, fear and shame have diminished because I was able to speak my truth and directly influence the end of my childhood trauma. There are authentic voices that did not have the same option and as a result have lived with the unresolved trauma for years. Often suppressing the memories and enduring the lifelong effects of the abuse as documented in ACES, Adverse Childhood Experiences Study. [The Relation Between Adverse Childhood Experiences and Adult Health: Turning Gold into Lead - PubMed \(nih.gov\)](#)

I speak with courage and candor requesting each of your votes **in support** of this bill. Please give the untold stories of childhood sexual abuse their **VOICE**! It is never too late for perpetrators to be held accountable.

Respectfully,

Leslie A Brunette



## Testimony in Support of House Bill 1382

Mark Jorritsma, Executive Director  
Family Policy Alliance of North Dakota  
February 3, 2021

Good morning Chairman Klemin and members of the House Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying in support of House Bill 1382, and respectfully request that you render a "DO PASS" on this bill.

Child abuse is a tragedy that we as a society cannot abide. Child abuse is when a parent or caregiver, whether through action or failing to act, causes injury, death, emotional harm or risk of serious harm to a child. There are many forms of child abuse and maltreatment, including neglect, physical abuse, sexual abuse, exploitation and emotional abuse.<sup>1</sup>

### Child abuse in the US

Over the years, child abuse has grown in magnitude and most likely also frequency of reporting. Here are some sobering facts about child abuse in our country.

In FFY 2019, there were nationally 656,000 victims of child abuse and neglect.<sup>2</sup> Based on 2018 statistics, other facts about child abuse include:<sup>3</sup>

- 1,770 children died from abuse and neglect in 2018.
- 91.7% of victims are maltreated by one or both parents.
- The highest rate of child abuse is in children under age one.

### Child Abuse in North Dakota

As for North Dakota, "The most commonly used criminal laws applied to child sexual abuse are located in NDCC, Chapter 12.1-20. Commonly applied laws are gross sexual imposition, continuous sexual abuse of a child, sexual assault, corruption or solicitation of minors, luring minors by computer, incest, indecent exposure, promoting obscenity to minors, minor performing in obscene performance and human trafficking."<sup>4</sup>

1515 Burnt Boat Drive, Suite C148  
Bismark, ND 58530

P 866.655.4545

UNLEASHING CITIZENSHIP

[FamilyPolicyAlliance.com/NorthDakota](http://FamilyPolicyAlliance.com/NorthDakota)

"In 2018, the ND Department of Human Services responded to 1307 reports of suspected child sexual abuse. In 2017, the North Dakota Attorney General's Office reported 587 child sexual abuse victims, North Dakota Children's Advocacy Centers interviewed 826 children who presented primarily for sexual abuse, and North Dakota crisis centers provided services to 364 child sexual abuse victims."<sup>5</sup>

### **What Do We Do about it?**

There are many suggested preventative measures to stop child abuse. Some of these include early childhood home visiting, improving access to child abuse education, and advocacy. All these and more preventative measures notwithstanding, we think it is an unfortunate reality that child abuse will continue nationwide as well as in our state for the foreseeable future. Thus, one way to supplement the prevention of child abuse is by improving/easing reporting mechanisms if it occurs.

House Bill 1382 would help in this regard. Extending the time period for child abuse reporting could be one way of helping to address this issue in our state. One can make the case that the more time that elapses between the act of child abuse and reporting, the more difficult details may be to recall. On the other hand, the potential to stop additional potential abuse and/or ultimately serve justice for crimes committed lends itself to a bill like this. We believe that the good from a bill such as this outweighs any potential downside. For that reason, I would ask you to please vote House Bill 1382 out of committee with a "DO PASS".

I would now be happy to stand for any questions.

---

<sup>1</sup> <https://www.childhelp.org/child-abuse/#:~:text=Child%20abuse%20is%20when%20a,abuse%2C%20exploitation%20and%20emotional%20abuse.>

<sup>2</sup> Child Maltreatment 2019, U.S. Department of Health & Human Services, Administration for Children and Families

<sup>3</sup> <https://americanspcc.org/child-abuse-statistics/#:~:text=National%20Child%20Abuse%20Statistics,by%20one%20or%20both%20parents.>

<sup>4</sup> North Dakota Task Force on the Prevention of Child Sexual Abuse, Final Report, November 2018

<sup>5</sup> *ibid*



House Judiciary Committee  
To: Chairman Lawrence Klemin  
February 3, 2021

Shane Goettle  
Lobbyist  
State Association of Nonpublic Schools;  
[sgoettle@odney.com](mailto:sgoettle@odney.com)  
701-426-0576

**HB 1382**

Chairman Klemin and members of the House Judiciary committee, my name is Shane Goettle and I am appearing today as a lobbyist for the State Association of Nonpublic Schools. There are over 6770 students in nonpublic schools across this state.

Our business is teaching and protecting students. There is nothing more important. We all agree that sexually abusing a child is unconscionable—something we should never tolerate. At the same time, a child in a public school has a three-year statute of limitations in which to make a claim of sexual abuse while a child in a nonpublic school has 10 years. I am sure that statement will surprise many.

I will get right to the point. HB 1382 would resurrect claims long barred by the passage of time for churches and nonpublic schools, but not for public schools, juvenile detention centers, and other government entities.

The bottom line for my client: To open up previously barred claims against private, nonpublic schools, while leaving public schools protected is patently and severely unjust.

Now, it is not obvious from the face of the bill that it ends up producing the result I have just pointed out to you. That takes some legal analysis. Please indulge me while I walk through that with you.

This bill focusses on amending section 28-01-25.1 of the North Dakota Century Code. Reading that section we see that a:

*“claim for relief resulting from childhood sexual abuse must be commenced within ten years after the plaintiff knew or should have known that a potential claim exists resulting from alleged childhood sexual abuse.”*

Here is the main point: the “ten years” referenced in this section only applies to private parties and institutions.

State entities and political subdivisions, including public schools, have statute of limitations separate from section 28-01-25.1.

- Actions against the state must be commenced within three years (NDCC § 28-01-22.1)
- Actions against political subdivisions<sup>1</sup> must be commenced within three years (NDCC § 32-12.1-10)

The North Dakota Supreme Court has repeatedly held that these statutes of limitation apply even if another statute provides a longer period of time. *Dimond v. State Board of Higher Education*, 2001 ND 208, 637 N.W.2d 692. See also, *Olson v University*, 488 N.W.2d 386 (N.D. 1992), *O'Fallon v. Pollard*, 427 N.W.2d 809 (N.D. 1988), *Burr v. Kulas*, 532 N.W.2d 388 (N.D. 1995), *Burr v. Kulas*, 1997 ND 98, 564 N.W.2d 631.

In 2016, the *Fargo Forum* found that from 1979 to 2015, the teaching licenses of 74 teachers were revoked. Fifty-seven percent of them involved sexual misconduct. HB 1382 does nothing to address those instances of possible abuse if they occurred in a public school.

Mr. Chairman, and members of the committee, as written, HB 1382 opens up the statute of limitations for private, nonpublic schools while leaving public schools protected from such claims. I doubt this result was intended by the sponsors, but it nevertheless exists and it unfairly and unjustly discriminates between private and public institutions. For that reason, the State Association of Nonpublic Schools opposes this bill.

---

<sup>1</sup> The term "political subdivision" includes school districts. NDCC § 32-12.1-02(6)(a).

**H.B. 1382**  
**REVIVING TIME-BARRED CIVIL CLAIMS**  
**TESTIMONY OF CARY SILVERMAN, ESQ.**  
**SHOOK, HARDY & BACON L.L.P.**  
**1800 K STREET, N.W., SUITE 1000**  
**WASHINGTON, D.C. 20006**

**ON BEHALF OF THE**  
**AMERICAN TORT REFORM ASSOCIATION**  
**BEFORE THE NORTH DAKOTA**  
**HOUSE JUDICIARY COMMITTEE**

**FEBRUARY 3, 2021**

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to express our concerns regarding H.B. 1382, which would revive time-barred civil claims.

I am a partner in the Public Policy Group of Shook, Hardy & Bacon L.L.P.'s Washington, D.C. office. I have written extensively on liability law and civil justice issues. I received my law degree and a Master of Public Administration from George Washington University, where I serve as an adjunct law professor. I have testified across the country on bills similar to H.B. 1382. I serve as co-counsel to ATRA, a broad-based coalition of businesses, municipalities, associations, and professional firms that have pooled their resources to promote fairness, balance, and predictability in civil litigation.

Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims. I commend the Committee for considering steps to protect children and help survivors of abuse. My testimony today focuses on general principles underlying statutes of limitations, as well as the reasons why retroactive changes to these laws, and particularly reviving time-barred claims, are often viewed as unsound policy by legislatures and unconstitutional by courts.

Changes to any statute of limitations should be examined objectively based on core principles. ATRA believes that for statutes of limitations to serve their purpose of encouraging prompt and accurate resolution of lawsuits and to provide the predictability and certainty for which they are intended, they must be, at minimum: (1) finite; and (2) any changes must be prospective. ATRA is concerned that the two-year reviver window contained in H.B. 1382 strays from these principles and may set a troubling precedent for other types of civil cases.

**Statutes of Limitations: An Overview**

Why do we have statutes of limitations? By encouraging claims to be filed promptly, statutes of limitations help judges and juries decide cases based on the best evidence available. They allow court to evaluate liability (in negligence cases, what a person or organization should have done to fulfill its duty of care) when witnesses can

testify, when records and other evidence is available, and when memories are fresh. As the U.S. Supreme Court has recognized, “the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.”<sup>1</sup>

Tort law, by its very nature, often deals with horrible situations that have a dramatic impact on a person’s life and the lives of others. No matter how tragic or appalling the conduct, or serious injury, North Dakota law requires a plaintiff to file a lawsuit within a certain time. For example, in North Dakota:

- When a person is seriously injured due to a drunk driver, he or she must file a civil lawsuit within six years, which is the general period that applies to personal injury claims.<sup>2</sup>
- A lawsuit alleging that a parent or child died because of someone’s wrongful conduct must be filed within two years of the person’s death.<sup>3</sup>
- Lawsuits alleging harm due to a doctor’s lack of due care must be filed within two years of the injury or discovery of the injury, but not more than six years from when treatment occurred.<sup>4</sup>

What these examples show is that the length of a statute of limitations is not typically based on the severity of the injury or the heinousness of the conduct at issue. The length of time to file a claim typically reflects the nature of the evidence. Claims involving hard evidence such as written contracts or land tend to have longer statutes of limitations. Cases involving standards of care and that rely on witness testimony to determine what was done or not done tend to have shorter periods to file a claim.

In addition to helping courts and juries reach accurate decisions, and safeguarding due process, statutes of limitations also allow businesses and nonprofit organizations to accurately gauge their potential liability and make financial, insurance coverage, and document retention decisions accordingly.

North Dakota’s statutes of limitations reflect a legislative judgment that a two to six-year period typically provides claimants with adequate time to pursue a claim while giving defendants a fair opportunity to contest complaints made against them. In addition, North Dakota law recognizes that when the injury is to a child, he or she must

---

<sup>1</sup> *United States v. Kubrick*, 444 U.S. 111, 117 (1979).

<sup>2</sup> N.D. Code § 28-01-16(5).

<sup>3</sup> N.D. Code § 28-01-18(4).

<sup>4</sup> N.D. Code § 28-01-18(3), (4).

have additional time to bring a claim. When a child is harmed, the clock generally does not begin until he or she becomes an adult (18).<sup>5</sup>

### **North Dakota's Current Statute of Limitations for Lawsuits Alleging Injuries Resulting from Childhood Sexual Abuse**

Over the past decade, North Dakota has twice extended its statute of limitation for civil actions alleging injuries resulting from childhood sexual abuse twice. Before 2011, the general statute of limitations for personal injury claims applied, providing six years of turning 18 to file a claim. That year, the legislature enacted a statute of limitations specifically for childhood sexual abuse claims that provided survivors with significantly more time to file a claim. Rather than provide a hard number of years to file a claim from the abuse or turning 18, the legislature enacted a law that allows lawsuits to be filed within seven years of discovery of the abuse and the resulting injury.<sup>6</sup> In 2015, the legislature further extended that law to provide ten years rather than seven years of knowing of the abuse to file a claim.<sup>7</sup> Those periods applied prospectively and did not open the door to claims alleging conduct that occurred decades ago. H.B. 1382 amends this statute.

### **The Proposed Legislation**

H.B. 1382 would open a two-year “window” during which the statute of limitations – any past statute of limitations – is completely set aside. Those claims, whether they occurred in 2009 or 1929, are “revived.” During this window, there is no time limit at all. To my knowledge, North Dakota has never taken such an extraordinary approach for any type of civil claim.

It is critical to recognize that the legislation does not distinguish between lawsuits filed against perpetrators and organizations. In many cases, the perpetrator will be dead. The lawsuits will claim that an organization failed to take adequate steps in the 1940, 1950s, or 1960s to protect the safety of the victim. The bill would allow claims against organizations based purely on negligence, meaning that a lawsuit only needs to assert that an organization should have taken additional steps to detect, avoid, or stop abuse many years ago, or should have had better practices for hiring or supervising employees or volunteers. These lawsuits do not need to show that an organization knew of abuse and allowed, enabled, or concealed it.

The legislation will result in a surge of decades-old claims that, if they go to trial, will place a jury face-to-face with a plaintiff who has no doubt experienced a horrible crime. On the other side will be an organization in the position of showing what it knew

---

<sup>5</sup> See, e.g., N.D. Code § 28-01-25.

<sup>6</sup> S.L. 2011, ch. 231, § 1 (eff. Aug. 1, 2011).

<sup>7</sup> S.L. 2015, ch. 234 (eff. Aug. 1, 2015) (S.B. 2331).

or didn't know, or what it did or didn't do, when the perpetrator is dead, those who worked at the organization at the time are long gone, and any records have long been discarded. In fact, the defendant – whether it is a day camp or doctor's office – may have been sold to a new owner, who will inherit the former entity's liabilities, including these lawsuits. With no ability to defend itself, an organization will have only one choice regardless of its level of responsibility; settle. That liability will be imposed on the current owner and affect those who the organization serves today. That is what occurs when a statute of limitations is abandoned.

### **Reviving Time-Barred Claims Sets a Troubling Precedent**

Discarding a statute of limitations and reviving-time barred claims, even temporarily, also sets a troubling precedent. As discussed earlier, tort claims often address horrible, tragic situations. Whether the claim involves an illness from exposure to a toxic substance, a birth defect associated with a drug, or a death resulting from wrongful conduct, North Dakota law sets a finite period to bring a claim to protect the ability of the judicial system to reach accurate decisions on liability based on reliable evidence.

H.B. 1382 may open the door to reviving any other claim in which the statute of limitations, when applied in an individual case or particular situation, is viewed as unfair. Why not take the same approach in other cases where there are allegations of wrongful conduct and that occurred decades ago? Product liability, asbestos litigation, climate change – there are many possibilities.<sup>8</sup> As discussed earlier, however, taking this approach makes the civil justice system unpredictable, unreliable, and unfair.

### **Questionable Constitutionality**

Reviving time-barred claims may also be unconstitutional. I have not had an opportunity to study North Dakota's constitutional law, but several state supreme courts have observed, "The weight of American authority holds that the [statute of limitations] bar does create a vested right in the defense" that does not allow the

---

<sup>8</sup> These concerns are not hypothetical. Such bills are occasionally introduced and typically do not gain traction, but making an exception here may open the door to more of these proposals. *See, e.g.*, Maine LD 250 (2019) (proposing retroactive expansion of the statute of limitations for product liability claims from six to fifteen years; reported "ought not to pass"); Cal. SB 1161 (2016) (proposing revival of time-barred actions under the state's unfair competition law against businesses alleging that they deceived, confused, or misled the public on the risks of climate change or financially supported activities that did so; reported from committee but died without floor vote); Cal. AB 15 (2015) (proposing a ten-year statute of limitations for torts involving certain human rights abuses that would have applied retroactively to revive time-barred claims that occurred up to 115 years earlier; provision removed and made prospective); Oregon S.B. 623 (2011) (proposing revival of time-barred asbestos claim during two-year window; died in committee).



legislature to revive a time-barred claim.<sup>9</sup> States reach this result through applying due process safeguards, a remedies clause, a specific state constitutional provision prohibiting retroactive legislation, or another state constitutional provision.<sup>10</sup> These cases generally recognize that a legislature cannot take away vested rights. It is a principle that is equally important to plaintiffs and defendants. These courts generally find that the legislature cannot retroactively shorten a statute of limitations and take away an accrued claim (such as by reducing a three-year period to one year, when a plaintiff is two years from accrual of the claim). Nor can it extend a statute of limitations after the claim has expired. Courts have applied these constitutional principles to not allow revival of time-barred claims in a wide range of cases—negligence claims, product liability actions, asbestos claims, and workers’ compensation claims, among others.

Last summer, the Utah Supreme Court was the latest to find similar reviver legislation (a three-year window that revived claims only against perpetrators) unconstitutional. While the court “appreciated the moral impulse and substantial public policy justifications” for the reviver, the court unanimously held that the principle that the legislature violates due process by retroactively reviving a time-barred claim is “well-rooted in our precedent,” “confirmed by the extensive historical material,” and has been repeatedly reaffirmed for “over a century.”<sup>11</sup>

---

<sup>9</sup> *Johnson v. Garlock, Inc.*, 682 So.2d 25, 27-28 (Ala. 1996); see also *Johnson v. Lilly*, 823 S.W.2d 883, 885 (Ark. 1992) (“[W]e have long taken the view, along with a majority of the other states, that the legislature cannot expand a statute of limitation so as to revive a cause of action already barred.”); *Frideres v. Schiltz*, 540 N.W.2d 261, 266-67 (Iowa 1995) (“[I]n the majority of jurisdictions, the right to set up the bar of the statute of limitations, after the statute of limitations had run, as a defense to a cause of action, has been held to be a vested right which cannot be taken away by statute, regardless of the nature of the cause of action.”); *Dobson v. Quinn Freight Lines, Inc.*, 415 A.2d 814, 816-17 (Me. 1980) (“The authorities from other jurisdictions are generally in accord with our conclusion” that running of the statute of limitations creates a vested right); *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 341-42 (Mo. 1993) (recognizing constitutional prohibition of legislative revival of a time-barred claim “appears to be the majority view among jurisdictions with constitutional provisions”); *State of Minnesota ex rel. Hove v. Doese*, 501 N.W.2d 366, 369-71 (S.D. 1993) (“Most state courts addressing the issue of the retroactivity of statutes have held that legislation which attempts to revive claims which have been previously time-barred impermissibly interferes with vested rights of the defendant, and this violates due process.”); *Roark v. Crabtree*, 893 P.2d 1058, 1062-63 (Utah 1995) (“In refusing to allow the revival of time-barred claims through retroactive application of extended statutes of limitations, this court has chosen to follow the majority rule.”).

<sup>10</sup> See, e.g., *Garlock*, 682 So.2d at 27-28; *Lilly*, 823 S.W.2d at 885; *Jefferson County Dept. of Social Services v. D.A.G.*, 607 P.2d 1004 (Colo. 1980); *Wiley v. Roof*, 641 So.2d 66, 68-69 (Fla. 1994); *Doe A. v. Diocese of Dallas*, 917 N.E.2d 475, 484-85 (Ill. 2009); *Skolak v. Skolak*, 895 N.E.2d 1241, 1243 (Ind. Ct. App. 2008); *Frideres*, 540 N.W.2d at 266-67; *Johnson v. Gans Furniture Indus., Inc.*, 114 S.W.3d 850, 854-55 (Ky. 2003); *Henry v. SBA Shipyard, Inc.*, 24 So.3d 956, 960-61 (La. Ct. App. 2009), writ denied, 27 So.3d 853 (La. 2010); *Dua v. Comcast Cable*, 805 A.2d 1061, 1072 (Md. 2002); *Dobson*, 415 A.2d at 816-17; *Doe*, 862 S.W.2d at 341-42; *Givens v. Anchor Packing, Inc.*, 466 N.W.2d 771, 773-75 (Neb. 1991); *Gould v. Concord Hosp.*, 493 A.2d 1193, 1195-96 (N.H. 1985); *Colony Hill Condominium Assn. v. Colony Co.*, 320 S.E.2d 273 (N.C. 1984); *Wright v. Keiser*, 568 P.2d 1262, 1267 (Okla. 1977); *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996); *Doe v. Crooks*, 613 S.E.2d 536, 538 (S.C. 2005); *Doese*, 501 N.W.2d at 369-71; *Ford Motor Co. v. Moulton*, 511 S.W.2d 690, 696-97 (Tenn. 1974); *Baker Hughes, Inc. v. Keco R. & D., Inc.*, 12 S.W.3d 1, 4 (Tex. 1999); *Roark*, 893 P.2d at 1062-63; *Murray v. Luzenac Corp.*, 830 A.2d 1, 2-3 (Vt. 2003); *Starnes v. Cayouette*, 419 S.E.2d 669, 674-75 (Va. 1992).

<sup>11</sup> *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020).

A minority of states find that reviving time-barred claims is permissible or appear likely to reach that result. These states generally follow the approach taken under the U.S. Constitution, which contains an “Ex Post Facto” clause that prohibits retroactive *criminal* laws,<sup>12</sup> including retroactive revival of time-barred criminal prosecutions,<sup>13</sup> but does not provide a similar prohibition against retroactive laws affecting *civil* claims.<sup>14</sup> For that reason, under federal constitutional law, there is no vested right in a statute of limitations defense that prohibits reviving an otherwise time-barred claim.<sup>15</sup> The U.S. Supreme Court has recognized, however, that state constitutions can provide greater safeguards than the U.S. Constitution.<sup>16</sup>

### **Two Thirds of States Have Not Taken the Extreme Approach of Reviving Time-Barred Claims**

Despite significant and understandable pressure, state legislatures have repeatedly rejected proposals to revive time-barred claims given the importance of statutes of limitations to assessing liability, protecting due process, and maintaining a stable and predictable civil justice system. Instead, most states, like North Dakota, have adopted a finite, but longer, statute of limitations for childhood sexual abuse claims than other claims and applied the longer period to future claims.

Just one-third of states have revived time-barred civil claims alleging injuries from childhood sexual abuse. It is important to recognize, however, that most of these laws place significant constraints on the types of claims that are revived in terms of the timing, application to perpetrators versus entities, and standard of proof. H.B. 1382 has none of these constraints.

No state enacted legislation address this issue in 2020 that I am aware of, but there was a significant amount of legislative activity in 2019. That year, four states enacted legislation that extended the statute of limitations prospectively only.

---

<sup>12</sup> U.S. Const. art. I, § 9, cl. 3 (“No bill of attainder or ex post facto Law shall be passed.”).

<sup>13</sup> See *Stogner v. California*, 539 U.S. 607 (2003) (holding that “a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution”).

<sup>14</sup> While the U.S. Supreme Court has provided Congress with more of a free hand to enact retroactive legislation, it has also expressed strong concern with this long “disfavored” approach. See *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994) (“[R]etroactive statutes raise particular concerns. The Legislature’s unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsiveness to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals.”).

<sup>15</sup> See *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945); *Campbell v. Holt*, 115 U.S. 620, 628 (1885).

<sup>16</sup> See *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980).

- **Alabama**, one of the few states that had no special statute of limitations for childhood sexual abuse claims, prospectively established a statute of limitation for childhood sexual abuse requiring claims to be filed by age 25.<sup>17</sup>
- **Pennsylvania** extended its statute of limitations for childhood sexual abuse claims from 12 years to 37 years of reaching majority.<sup>18</sup> The legislature did not revive time-barred claims because it is constitutionally prohibited from doing so, but began a process for amending its constitution to permit such an approach.<sup>19</sup>
- **Tennessee** prospectively changed its law from requiring an action to be filed within 3 years of discovery to 15 years of turning 18 or 3 years of discovery of the abuse.<sup>20</sup>
- **Texas** prospectively extended the statute of limitations from 15 years to 30 years of majority.<sup>21</sup>

Eight states and the District of Columbia revived time-barred claims in 2019. Some of these states enacted very narrow revivers. For example:

- **Arizona** extended its statute of limitations to 12 years of age 18. It adopted a window that is about 1 1/2 years long that revives claims only where there is clear and convincing evidence that an entity knew an employee or volunteer engaged in sexual abuse.<sup>22</sup>
- **Montana's** legislation requires filing a claim within 3 years of abuse or discovery of the abuse. It enacted a 1-year window for claims against perpetrators who are alive and admitted or were convicted of abuse, and claims against entities before the plaintiff is age 27 or not later than 3 years of when a person discovers or should have discovered the injury caused by the abuse.<sup>23</sup>
- **Rhode Island** passed a bill extending the statute of limitations for childhood sexual abuse cases from just 7 years to 35 years of turning 18, and providing a 7-year period to bring a claim from when a victim discovers or reasonably

---

<sup>17</sup> S.B. 11 (Ala. 2019) (to be codified at Ala. Code Ann. § 6-2-8(b)).

<sup>18</sup> H.B. 962 (Pa. 2019).

<sup>19</sup> H.B. 963 (Pa. 2019).

<sup>20</sup> H.B. 565 (Tenn. 2019).

<sup>21</sup> H.B. 3809 (Tex. 2019).

<sup>22</sup> H.B. 2466 (Ariz. 2019).

<sup>23</sup> H.B. 640 (Mont. 2019).

should have discovered the injury caused by the abuse. Before enacting this law, the General Assembly removed a 3-year window that would have permitted time-barred claims. Instead, the enacted legislation applies the extended period retroactively for claims brought against perpetrators only and explicitly does not revive time-barred claims against entities.<sup>24</sup>

Other states adopted somewhat broader revivers with constraints.

- The **District of Columbia** law generally requires a lawsuit to be filed before **age 40** and included a 2-year window reviving claims within that period that will close in May 2021.<sup>25</sup>
- **North Carolina** extended its statute of limitations from 3 years of age 18 (the period for personal injury lawsuits) to **age 28**. The legislation included a 2-year window for time-barred claims that will close on December 31, 2021.<sup>26</sup>

California, New York, New Jersey, Vermont, and, earlier, Minnesota adopted the broadest revivers:

- **California** extended its statute of limitations to require filing a claim from 8 years of majority (age 26) to 22 years of majority. The California law includes a second window (3 years) that will not only apply to private entities (as the state's first reviver did in 2003) but also apply to local public schools and government entities.
  - California's one-year window in 2003 led to over 1,000 lawsuits and over \$1.2 billion in liability.<sup>27</sup> California Governor Jerry Brown subsequently vetoed two additional revivers that followed, based on this experience.<sup>28</sup>
  - Within days of enactment of the 2019 law, the *Press Democrat* reported, "the floodgates already are opening."<sup>29</sup> The window began in January 2020.

---

<sup>24</sup> S.B. 315 Sub. A (R.I. 2019).

<sup>25</sup> D.C. Act 22-593.

<sup>26</sup> S.B. 199 (N.C. 2019).

<sup>27</sup> See Bart Jones, *Church Pushed to Financial Brink*, *Newsday*, Mar. 22, 2009, at A15; see also David Bailey, *Minnesota Catholic Archdiocese Files for Bankruptcy Protection*, *Reuters*, Jan. 16, 2015.

<sup>28</sup> Cal. Office of the Governor, Veto Message, AB 3120 (Sept. 30, 2018), [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201720180AB3120](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180AB3120); Cal. Office of the Governor, Veto Message, S.B. 131 (Oct. 12, 2013), at [http://gov.ca.gov/docs/SB\\_131\\_2013\\_Veto\\_Message.pdf](http://gov.ca.gov/docs/SB_131_2013_Veto_Message.pdf).

<sup>29</sup> Mary Callahan, *New Law Opens Window for Child Sex Abuse Lawsuits in California*, *The Press Democrat*, Oct. 15, 2019.

- **New York** extended its time to file civil claims from 5 years of age 18 (age 23) against a perpetrator and 3 years of age 18 (age 21) for negligence claims against organizations to age 55.<sup>30</sup> The New York law included a reviver window that opened on August 14, 2019 and will close on August 14, 2021.<sup>31</sup>
  - Immediately upon enactment of the New York law, plaintiffs' law firms flooded televisions and the internet with advertisements to file a lawsuit. Before the window even opened, a few firms signaled they had 300 to 400 cases ready to be filed.<sup>32</sup>
  - The *New York Times* reported that, as the window approached, "major institutions across New York State . . . are preparing for a deluge of lawsuits."<sup>33</sup> *USA Today* described the day the window opened as "a legal free-for-all."<sup>34</sup> By the end of the day, 427 revived claims had been filed.<sup>35</sup>
  - Within five weeks of the window opening, the number of lawsuits had grown to over 700. While about 550 of these lawsuits targeted Catholic churches, the others name public schools, hospitals, summer camps, youth groups, baseball leagues, music schools, after-school clubs, and a martial arts association as defendants.<sup>36</sup>
  - By the end of the first year of the reviver window, the number of lawsuits filed had climbed to 4,000, with claims dating back to the 1950s. Many of the lawsuits do not even name the perpetrator as a defendant, but allege only that organizations such as the Boy Scouts, Fresh Air Fund, and school districts should have prevented the abuse.<sup>37</sup>
  - Each of the five judicial districts in New York City has designated a special section to hear revived childhood sexual abuse cases. Statewide, 45 judges have been designated to hear these cases, including 12 in New York City

---

<sup>30</sup> S. 2440 / A. 2683 (N.Y. 2019).

<sup>31</sup> The period to file revived claims was extended from one to two years. S. 7082 / A. 9036 (N.Y. 2020).

<sup>32</sup> Jon Campbell, *Child Victims Act: Why Thousands of New York Sex Abuse Victims Will be Seeking Justice*, Democrat & Chron., Aug. 8, 2019.

<sup>33</sup> Rick Rojas, *He Says a Priest Abused Him. 60 Years Later, He Can Now Sue*, N.Y. Times, Aug. 13, 2019.

<sup>34</sup> Steve Orr, *Hundreds of Child Sex Abuse Claims Filed on First Day of New York's Child Victims Act*, USA Today, Aug. 14, 2019.

<sup>35</sup> Matthew Laviertes & Jonathan Allen, *As New York Legal Window Opens, Child Sex Abuse Victims Sue Catholic Church, Others*, Reuters, Aug. 14, 2019.

<sup>36</sup> Corinne Ramey & Tom McGinty, *New York Sex-Abuse Law Brings Forth Hundreds of New Cases*, Wall St. J., Sept. 29, 2019.

<sup>37</sup> Saba Ali, *3,797 and Counting: Child Victims Act Suits in NY Add Up, With More Expected*, Poughkeepsie Journal, Aug. 11, 2020.



alone. Judges, hearing officers, and mediators will undergo special training and the court system has developed new procedures to handle these cases.<sup>38</sup>

- Already, at least four New York diocese – Buffalo, Rochester, Rockville Centre (Long Island), Syracuse – have filed for bankruptcy.<sup>39</sup> More are expected to follow.
- **New Jersey** extended its period to file claims to age 55 or 7 years of discovery and adopted broad 2-year reviver window, which opened on December 1, 2019.
- **Vermont** eliminated its statute of limitations and indefinitely revived time-barred claims, though it requires a showing of gross negligence for revived claims against organizations.
  - I was in Vermont when an organization called Sunrise Family Resource Center testified on that bill.<sup>40</sup> Sunrise testified that for 50 years it has provided youth development, housing, and educational services to Vermont families, serving 1,500 families annually. The nonprofit organization, it said, receives 95% of its funding through state grants. After a former employee was accused of sexual abuse in 1988, the state’s Department of Social and Rehabilitative Services conducted a thorough investigation and found the accusations unfounded. Sunrise testified, however, that the evidence supporting that decision was destroyed in a fire in the late 1990s. Nearly 30 years later, those individuals filed lawsuits against Sunrise. Sunrise testified that reviving time-barred claims is a “zero-sum issue for Sunrise, and for many other organizations like it.” According to the organization, allowing these claims to proceed despite the statute of limitations may lead it to close its doors and hurt the “vulnerable populations who benefit from those programs.”<sup>41</sup>
- **Minnesota** prospectively eliminated its statute of limitations and adopted a 3-year window reviving time-barred claims in 2013. About 850 lawsuits were filed during this period. Five hundred of these lawsuits were against the

---

<sup>38</sup> Dan M. Clark, *NY State Courts Prepared for Flood of Lawsuits Under New Child Victims Act, Officials Say*, Law.com, Aug. 13, 2019.

<sup>39</sup> *NY Diocese Files for Bankruptcy Amid Clergy Abuse Lawsuits*, Claims Journal, Oct. 2, 2020.

<sup>40</sup> See Sunrise Family Resource Center, [Testimony](#) regarding H330, Before the Vermont Senate Jud. Comm., Apr. 18, 2019.

<sup>41</sup> Colin Meyn, *Family Center ‘Muddied The Waters’ on Eliminating Child Abuse Statute of Limitations*, VT Digger, Apr. 19, 2019.

Catholic Church, leading five of the six dioceses in the state to declare bankruptcy.<sup>42</sup>

Most states that adopted revivers in earlier years did so in very limited ways:

- **Massachusetts** extended its statute of limitations from 3 years of becoming an adult (the general period for personal injury claims) to 35 years of age 18 or 7 years of discovery of the injury in 2014. The new period applied retroactively to revive time-barred claims against perpetrators only.<sup>43</sup> Massachusetts also has a low cap on damages in civil claims against charitable organizations.
- **Georgia** extended its statute of limitation to age 23 or 2 years of discovery and enacted a 2-year window reviving time-barred claims against perpetrators only in 2015.<sup>44</sup>
- **Utah** adopted a statute of limitation that allows claims to be filed within 35 years of turning 18 and enacted a 3-year window for claims against perpetrators and those who would be criminally responsible in 2016.<sup>45</sup> As discussed early, the Utah Supreme Court found that reviver unconstitutional in 2020.
- **Michigan** prospectively extended its statute of limitations to age 28 or 3 years of discovery, and adopted a 90-day reviver window tailored for victims of a convicted criminal, Dr. Larry Nasser in 2018.<sup>46</sup>
- In 2009, **Oregon** extended its statute of limitation to permit claims until age 40 against perpetrators or claims alleging that an entity knowingly allowed, permitted, or encouraged child abuse, and applied that new period retroactively.

---

<sup>42</sup> Aaron Aupperlee, *Dioceses Have Gone Bankrupt After Opening Window to Sex Abuse Lawsuits*, Tribune-Review, Dec. 29, 2018.

<sup>43</sup> Mass. Act ch. 145, § 8 (2014) (codified at Mass. Gen. Laws ch. 260, § 4C, 4C 1/2). The Massachusetts law's 35-year period for filing a claim is "limited to all claims arising out of or based upon acts alleged to have caused an injury or condition to a minor which first occurred after the effective date of this act" and did not revive time-barred claims. The Massachusetts law's seven-year discovery period, however, applied retroactively.

<sup>44</sup> Ga. Code Ann. § 9-3-33.1(d)(1) ("The revival of claim...shall not apply to [a]ny claim against an entity.").

<sup>45</sup> Utah Code Ann. § 78B-2-308(7) (reviving a civil action against an individual who "(a) intentionally perpetrated the sexual abuse;" or "(b) would be criminally responsible for the sexual abuse").

<sup>46</sup> Mich. Public Act 183 (S.B. 872) (signed June 12, 2018) (amending Mich. Comp. Laws § 600.5805 and adding § 600.5851b). The Michigan law revived claims filed by an individual who, while a minor, was a victim of criminal sexual conduct after December 31, 1996 when the person alleged to have committed the criminal sexual conduct was convicted of criminal sexual conduct and that defendant was (a) in a position of authority over the victim as the victim's physician and used that authority to coerce the victim to submit, or (b) engaged in purported medical treatment or examination of the victim in a manner that is, or for purposes that are, medically recognized as unethical or unacceptable.

Aside from Vermont, two other states have required a showing of gross negligence in revived claims against entities.

- **Delaware** eliminated its statute of limitations and revived time-barred claims during a 2-year window in 2007. It required a showing of gross negligence for revived claims.<sup>47</sup> Nevertheless, the Roman Catholic Diocese of Wilmington filed for bankruptcy to manage the potential liability resulting from a flood of lawsuits triggered by the window.<sup>48</sup>
- Similarly, **Hawaii** passed a series of 2-year reviver windows beginning in 2012, which also required a showing of gross negligence.<sup>49</sup> That window closed on April 24, 2020.

By way of contrast, H.B. 1382 provides a two-year window to file a lawsuit against any organization with no time limit and no evidentiary or other safeguards.

\* \* \*

In sum, it is important that North Dakota's civil justice system maintain the predictability and certainty of having a finite statute of limitations for any type of civil claim. Legislation that opens a window during which decades-old claims are revived sets a troubling precedent, allowing decades-old claims where witnesses, records, and other evidence upon which judges and juries can evaluate liability are no longer available. North Dakota's statute of limitations, in providing ten-years to bring a claim from discovery of the abuse, is more open ended than many states, but if the Committee feels that more time is needed, there are alternatives that would provide survivors of childhood sexual abuse with more time to sue without violating core principles of the civil justice system. Thank you again for the opportunity to testify today and considering ATRA's concerns as you address this difficult and important issue.

---

<sup>47</sup> Del. Code tit. 10, § 8145(b).

<sup>48</sup> Ian Urbina, *Delaware Diocese Files for Bankruptcy in Wake of Abuse Suits*, N.Y. Times, Oct. 19, 2009.

<sup>49</sup> Haw. Rev. Stat. § 657-1.8(b).

# North Dakota testimony for House Bill 1382

## Statute of Limitation Reform

### Tim Lennon

#### Introduction

My name is Tim Lennon. I am a survivor of sexual abuse when I was twelve years old. I was violently raped by my parish priest in Sioux City, Iowa, about 1960.

I presently live in Tucson, Arizona.

#### My Story

My story is relevant to House Bill 1382 as memories of the rape remained buried for fifty years. Memories surfaced when my twin daughters turned twelve, which evoked memories of the rape when I was twelve.

#### My Advocacy Background

I am the President of the Board of Directors of the *Survivors Network of those Abused by Priests*, [SNAPnetwork.org](http://SNAPnetwork.org)

SNAP is a peer network of over 30,000 survivors and supporters and is a 501(c)3 non-profit. SNAP was founded thirty years ago. The mission is to support survivors, protect the vulnerable, and hold predators accountable.

I have been an active volunteer and national leader in SNAP for the previous ten years. Most of my volunteer work was as a correspondent for the SNAP website. I have spoken to or written to many thousands of survivors of sexual abuse over the years. During my time as SNAP leadership, I have engaged with several state leaders to advocate reform of SOL laws in Iowa, South Dakota, Arizona, and Louisiana.

My advocacy for justice and accountability has led me to an international meeting in Dublin, Ireland. I also traveled to the Vatican twice as part of a SNAP team to call for reform; the latest visit was one year ago. I have been interviewed by all major media, both nationally and internationally. These

include the whole range of media, national newspapers, network TV news, magazines, radio, and hundreds of other media outlets.

I have a blog with a considerable amount of information about my story and background. I have other supporting material that is helpful for other victims and survivors.

<https://standupspeakup.org/>

## **Support of Bill 1382**

I submit the following as my testimony in support of House Bill 1382. I plan to give oral testimony as well in response to any of my statements.

## **Issues, questions, and challenges concerning SOL reform**

**Part 1 Reply to the suggestion that the preponderance of evidence is so low in civil cases that many 'innocent' people will be dragged into court.**

*Thank heavens we have a jury system of assessment guilt or innocence by peers. Every case, not settled previously, goes before a jury. I trust the jury system; I ask that legislators trust the jury system.*

*We have a system of judges and juries. Let us not avoid or deny accountability based upon a 'fear' of misuse. The process is not a one way street for victims. According to federal statistics, the rate of false accusations is limited to 2%.*

See <http://www.bishop-accountability.org/AtAGlance/data.htm>, point #9

<https://www.nationalcac.org/wp-content/uploads/2016/10/False-allegations-of-sexual-abuse-by-children-and-adolescents.pdf>

*The good citizens of the jury protect us to assess any testimony and resulting guilt or innocence.*

**Part 2 Many ask why can't victims report previously to seek justice?**

*When I was violently raped at age twelve by my parish priest, it caused lifelong harm. The effects of PTSD remain to this day, sixty years later. Memories of the life-threatening rape remained buried for fifty years. Memories surfaced when my twin daughters turned twelve, which evoked memories of the violence and rape I suffered when I was twelve.*

**CHILDDUSA.org/SOL** research shows the average age of a victim of child sex abuse is 52.

*Other causes for the delay in reporting:*

- *Many suffer from the unwanted feelings of guilt and shame that burdens so many victims. Victim-shaming is, sadly, a cultural blot on our society. Some victims are humiliated and shunned by others.*
- *Tied to shaming is self-blaming where the victim laments actions; could I have done more to fight back?*
- *Some worry that others would take action; for example, a child victim might not report because they believe the father would kill the perpetrator—more than one victim has mentioned this fear to me.*
- *Victims have a fear that no one will believe them. Predators groom the victim and groom the parents and those around the victim. Predators cultivate charm and good nature, the priest who raped me, was a friendly, smiling, joking Irishman. A victim may fear that they will not be believed. Or they may believe it was their fault.*
- *The predator may be a family member that the victim does not want to be ostracized by the family or cause divisions in the family.*
- *The victim's job or professional standing may be harmed if they step forward. Job loss is a real threat and can be used as intimidation.*
- *Tragically rape and sexual assault are a direct attack on self-worth so that a victim may be so beat down and depressed that reporting is not seen as an option. I have seen this tragedy many times.*
- *The psychological effects may be so dramatic that the victim's harm is pushed aside, disassociated.*
- *Social stigma and humiliation discourage the most vulnerable.*

**<https://lacasacenter.org/why-child-abuse-victims-dont-tell/>**

**<https://medium.com/survivors/this-is-why-i-kept-sexual-abuse-secrets-for-20-years-59c71cc6b20d>**



**Part 3 Will a civil suit hurt the victim? Will they have to re-live the horrors of memories of sexual violence? I believe SOL reform helps them.**

*Yes. It is incredibly difficult for a victim to come forward to name the crime and the criminal. Yes, it can be emotionally challenging. That is why, as mentioned previously, most cases are settled out of court previous to jury trials.*

*While holding a predator and an institution accountable for their crimes can be difficult, we must weigh that challenge to the benefit that a successful case may bring support to needed therapy.*

*Keep in mind that speaking up, fighting back through civil court action is an integral part of healing. A victim can move forward to a survivor who begins to determine his or her future.*

*Filing a lawsuit is voluntary. The victim weighs the challenges versus the benefits. Legislators should not take this choice away from the victim. And legislators should give opportunity for all victims to achieve justice.*

**Part 4 What kinds of evidence could be relevant after many years?**

*Once again, any lawsuit goes in front of a jury; they weigh the evidence.*

*Testimony is taken under oath of all parties. Subpoenas can be issued; records can be discovered. Previous correspondence, letters, photos, news articles, receipts are all evidence. Most institutions keep records, the Church, schools, Boy Scouts, etc. The FBI has commanded that the Catholic Church retain all their records.*

**<https://www.ydr.com/story/news/2018/10/26/catholic-priest-abuse-all-us-dioceses-now-included-federal-investigation/1779082002/>**

*All evidence is relevant! All parties have equal opportunity to present evidence.*

*It is worth repeating, very few cases ever go to trial. Very few.*

*The harm is lifelong. The raping and sexual violence are equivalent to murder. (The lifelong damage has had crippling effects for me for sixty years and will continue for the rest of my life.) There should be no limitation on SOL laws for child sexual violence, either criminal or civil.*

*Note Economic harm of \$830k:*

<https://www.sciencedirect.com/science/article/abs/pii/S0145213418303867>

[http://awrsipe.com/Click\\_and\\_Learn/2009-11-15\\_unspeakable\\_damage.html](http://awrsipe.com/Click_and_Learn/2009-11-15_unspeakable_damage.html)

## **Part 5 Too much of 'he said--she said,' or let the jury decide.**

*Please note, the essential element for victims is justice and accountability. There is an equal opportunity for a jury to assess the validity of both sides' testimony and evidence. I trust the jury system, and I ask that legislators put similar trust in this system.*

*We benefit from having testimony under oath for all parties as well as the power of subpoena.*

## **Part 6 Reply to the fear that the reform of Statute of Limitation laws will be a burden to the courts**

*Justice, accountability, and the rule of law must be the principal concern of any legal proceeding. Over 30 states have reformed their Statute of Limitation (SOL) laws in the last couple of years. **CHILDUSA.org/SOL** There have been no reported cases of the justice system overwhelmed by SOL reform. Typically, the vast majority of civil cases are settled out of court, maybe 90% or more. There is no burden placed on the state justice system of North Dakota. Seeking justice for the most horrific crime of child rape and sexual violence is not frivolous.*

## **Part 7 Is prevention the solution? Prison makes people worse.**

*If a violent predator rapes a child, why should we worry about it making them worse? What is worse than a child rapist?*

*Sexual violence and rape of children is equivalent to murder.*

*Yes, we should work on prevention. If you don't hold rapists and child molesters accountable, they will continue to rape and abuse for decades.*

## **Part 8 How does SOL reform prevent further sexual abuse of children? How does reform make our community safer?**

*Three facts are essential in understanding why there needs SOL reform and how SOL reform makes the community safer:*

*1. Sexual predators abuse for decades. Just last week, a 76 year old man was convicted of sexually molesting boys.*

*<https://patch.com/rhode-island/narragansett/former-ri-boy-scout-leader-gets-40-years-sexual-assaults>*

*2. Most child rape and sexual violence victims never come forward, maybe as high as 70%. See links and rationale in Part 3 above.*

*3. If they sexually abused one child, they have abused dozens.*

*Predators abuse victims children for a lifetime, maybe eight to over a hundred victims abused. In my case, the predator who raped me had been caught three times, never reported. After I went public in 2016, fifteen of my classmates came forward as well.*

*A minister, a priest, athletic coach, a Boy Scout leader, teacher, or therapist who sexually preys on children rely on the many impediments to reporting by victims. They can just wait out the clock to gain immunity from prosecution, which, in turn, leads to a 'get out of jail card' for the predator.*

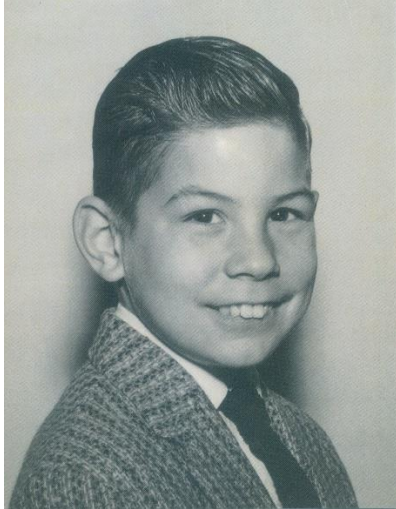
*The community is threatened by a lifetime of sexual abuse of children.*

## **MY STORY**

I was raped and sexually abused by a priest, Fr. Murphy, in Sioux City, Iowa, when I was twelve. The abuse continued for several months; the abuse stopped due to Murphy getting caught abusing another child. He was removed and transferred from the parish and moved on. Murphy had been caught molesting children in three towns in Iowa (Danbury, Whittimore, and Fr. Dodge). The bishop transferred Murphy each time he got caught before coming to my parish and elementary school.

Memories of the rape and sexual molestation remained buried until 2010, fifty years later. I have the good fortune to have the support of my family, friends, and community. Together with therapy and SNAP support groups, I have been able to grow and thrive.

Picture of me at about the time of the rape and sexual abuse.



My blog, <https://standupspeakup.org/>, provides considerable background information. And there is documentation for those interested in seeking more information and help.

I am presently the President of the Board of Directors of the *Survivors Network of those Abused by Priests*. See: <https://www.snapnetwork.org/>

I submit this testimony as I want to make sure that what happened to me does not happen to another child.

I will be happy to reply to all questions, and I will be happy to respond to any request for more information.

Tim Lennon

[tlennon@SNAPnetwork.org](mailto:tlennon@SNAPnetwork.org)

415 312 5820

Tucson, Arizona

January 30, 2021

Good Morning Chairman Klemin and members of the House Judiciary Committee. It is good to be here today.

My name is Austen Schauer, a Representative from West Fargo, District 13.

Today, I appeal to you to bring the ***opportunity for justice*** to victims of child sexual abuse in North Dakota.

With a **Do Pass** on **House Bill 1382**, you can say to survivors of child abuse, "It was not your fault, we stand by you."

And further, with a **Do Pass** on **HB 1382**, you can say to **child abusers**, "Your time of hiding has ended."

**HB 1382** creates a ***two-year window*** for past abuse victims giving them the option to file a civil lawsuit against the alleged perpetrator.

In other words, it suspends Statute of Limitations for a two-year period allowing victims to move forward with a civil suit if they so desire.

On page one, lines 12 to 14, it says:

**If on August 1<sup>st</sup>, 2021, a claim for relief that resulted from childhood sexual abuse is barred because of time limitation under subsection 1, that claim is revived.**

**A claim revived under this subsection must be commenced before August 1<sup>st</sup>, 2023.**

Three lines of law, two sentences, that can knock down a wall of injustice built on despair, anger and a system that shuts the door on victims via a clock.

17 other states have extended this Open Window. It's now our turn.

Mr Chairman, we have several more people ready to give testimony on **HB 1382**, but I am certainly open to questions you may have.

Thank you.



11/14/21

Dear Rep. Austin Schauer

Am writing to thank you for pushing the statute of limitations from 3-10 yrs. and the open window of 2 yrs for CIVIL Lawsuit.

Am going to tell you I am an adult victim/SURVIVOR of Cath. Clergy abuser.

I made my complaint to The Fargo diocese when Bp Aquila was our bishop. It took 2 to 3 mo for them to send report back to me.

I was 1 of 4 this same priest abused, 3 were Relig Sister in Rapid City SD. This priest is Denis Grunkert OSB - (Benedictine) Blue Cloud Abbey, which is now closed. He was my spiritual director when he was at Fort Totten, ND at Seven Dolors Church.

No one has been in contact with me from the diocese. Only thing was I was told I could go to Cath. Family Services for counseling.

2)

and they're based on income.

I live in Devils Lake, so that would be 200 miles to go. I never did. Then I was thanked for keeping the diocese safe.

Seems <sup>AR</sup> Denis Quinkert was a priest in good standing, otherwise couldn't get into the diocese.

The Abbot in charge at Blue Cloud thinks he knew Denis.

I was already in trouble by sending complaint to the diocese, and it was the Abbots secret and mine, well it wasn't.

I never saw Bp Aquila but when he came here for meetings and I was there, he looked at me said "I know who you are". He didn't! Only by my complaint. There was no follow up. Yet I know other women have been abused, (Jargo 3) don't know who they're but others as well. Women fear coming forward; stigma!

18 months is not a long enough investigation.



I am an Irish/Polish Cath.  
Born and raised in Grand Forks.

Priests have been going on  
Sabbaticals for treatment for abuse  
Then come back and moved again.

Then you get a priest on TV  
saying he has nothing to feel guilty  
about after abusing a child. This  
Fr Martin was my teacher at St James HS.  
Grand Forks.

Other states have done yrs. of  
investigating, ND is way behind in  
tracking where victims are. We  
have NO Reservations where people  
aren't talking. They have to look  
at this.

I am going to send my report I  
received from Fargo diocese how they  
work.

I apologize for being kinda  
scrambled in my writing but had  
to get this out to you.

Sincerely

Peggy Kryzsko (pron. CRISCO)



## DIOCESE OF FARGO

5201 Bishops Boulevard, Suite A  
Fargo, North Dakota 58104-7605

www.fargodiocese.org

Phone: 701.356.7900

Fax: 701.356.7999

### Personal and Confidential

April 23, 2008

Peggy Kryzsko  
307 4<sup>th</sup> St. NE Apt 8  
Devils Lake, ND 58301

Dear Peggy,

I thank you for the concern that you have expressed to me regarding the suitability of Father Denis Quinkert, O.S.B., retired abbot of Blue Cloud Abbey in Marvin, South Dakota, to exercise priestly ministry. Your concern came to me through the written report of January 24, 2008, and papers that Father Dale Kinzler, your pastor, sent to me and through your own letter of March 19, 2008. I took your concern as genuine and serious because of your account of being touched inappropriately by Father Quinkert during spiritual direction while he was serving the parishes on the Fort Totten Indian Reservation in the Diocese of Fargo in the late seventies and early eighties.

I checked into the standing of Father Quinkert by questioning Abbot Thomas Hillenbrand, O.S.B., the present abbot of Blue Cloud Abbey, about the life and ministry of Father Quinkert. Abbot Hillenbrand told me that there was a period of time that Father Quinkert was struggling with celibacy, and that he acted inappropriately with women by breaking boundaries that he was obligated to uphold. After you reported the misconduct that you experienced to the Church in the Diocese of Fargo and the Diocese of Sioux Falls, Blue Cloud Abbey was informed and addressed Father Quinkert about his misconduct with women. In 1991, Father Quinkert participated in a sabbatical during which he received counseling and spiritual direction.

Abbot Hillenbrand told me that Father Quinkert has never been accused of sexual abuse against youth and children. Abbot Hillenbrand told me that Father Quinkert has never been accused of any other actions of touching women inappropriately at any other time during his priestly ministry than the period of time he was exercising ministry in Fort Totten which ended in 1982. Since 1983, he has served in parishes in Marty, Greenwood, Wagner, and Milbank, all in South Dakota. Abbot Hillenbrand has never received any report of misconduct regarding Father Quinkert from anyone from any of

7  
2008  
4/23  
ACK  
2

Peggy Kryzsko  
April 23, 208  
Page Two

these parishes. Abbot Hillenbrand said that in the last parish where he served in Milbank that the people were very favorable toward Father Quinkert.

Abbot Hillenbrand has sent a letter of good standing to me testifying that Father Quinkert is a priest in good standing, and that he is suitable to exercise priestly ministry. This means that Father Quinkert presents no harm to women and anyone else in his ministry to the people. Father Quinkert was in good standing when he substituted at St. Aloysius' Parish in Lisbon last year. It is the policy of the Diocese of Fargo that priests from outside the Diocese must have letters of good standing testifying to their fitness to exercise ministry before they are given permission to serve here.

Peggy, I thank you again for your concern that the members of our Church are safe, and that they be treated with dignity by our priests. I hope that this letter responding to your concern about Father Quinkert will put your mind at rest and give peace to your soul.

God bless you!

Sincerely yours in Christ,

*Rev. Msgr. Dennis A. Skonseng*

Rev. Msgr. Dennis A. Skonseng  
Vicar General and Vicar for Clergy

CC: Most Rev. Samuel J. Aquila, Bishop of Fargo  
Abbot Thomas Hillenbrand, Abbot of Blue Cloud Abbey, Marvin, South Dakota  
Rev. Dale H. Kinzler, Pastor of St. Joseph Catholic Church, Devils Lake, North Dakota

*I was one of 4 women  
3 being religious Sisters of the Blessed Sacrament  
Rapid City S.D.  
He is a Sat Addict!*



21.0463.02001

Sixty-seventh  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1387**

Introduced by

Representatives Schauer, Adams, Brandenburg, Hagert, Lefor, Magrum, Satrom, Strinden  
Senators Bakke, Dwyer, Heitkamp, Hogan

1 A BILL for an Act to amend and reenact sections 12.1-36-01, ~~29-04-02~~, and 29-04-03.1 of the  
2 North Dakota Century Code, relating to the statute of limitations for prosecuting surgical  
3 alteration of the genitals of a female minor, ~~felonies other than murder~~, and sexual abuse of  
4 minors.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 12.1-36-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12.1-36-01. Surgical alteration of the genitals of female minor - Penalty - Exception.**

- 9 1. Except as provided in subsection 2, any person who knowingly separates or surgically  
10 alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C  
11 felony.
- 12 2. A surgical operation is not a violation of this section if a licensed medical practitioner  
13 performs the operation to correct an anatomical abnormality or to remove diseased  
14 tissue that is an immediate threat to the health of the female minor. In applying this  
15 subsection, any belief that the operation is required as a matter of custom, ritual, or  
16 standard of practice may not be taken into consideration.
- 17 3. Any parent, adult family or household member, guardian, or other custodian of any  
18 child who willfully allows a child to be surgically altered under this section is guilty of  
19 child abuse under subsection 1 of section 14-09-22.
- 20 4. A custom, ritual, religious practice, or the consent of the parent or guardian of a minor  
21 is not a defense against a violation under this section.
- 22 5. Notwithstanding the limitations of section 29-04-02, prosecution for a violation of  
23 subsection 3 must be commenced within ~~three~~ten years of the date of the offense or



1           within ~~threeten~~ years after the offense is reported to law enforcement, whichever is  
2           later.

3       — **SECTION 2. AMENDMENT.** Section 29-04-02 of the North Dakota Century Code is  
4       amended and reenacted as follows:

5       — **29-04-02. Prosecution for felony other than murder within threeseven years.**

6       — Except as otherwise provided by law, a prosecution for any felony other than murder must  
7       be commenced within threeseven years after its commission. Prosecution of felony offenses  
8       under chapter 12.1-23 must be commenced within the later of threeseven years of commission  
9       of the last act that is an element of the offense, threeseven years of discovery of the stolen  
10      property, or threeseven years of discovery of the loss of the property or services. Nothing in this  
11      section prevents a person prosecuted for murder from being found guilty of any included  
12      offense and punished accordingly.

13       **SECTION 2. AMENDMENT.** Section 29-04-03.1 of the North Dakota Century Code is  
14      amended and reenacted as follows:

15       **29-04-03.1. Prosecution for sexual abuse of minors.**

- 16       1. Except as provided in subsection 2, a prosecution for a violation of sections  
17       12.1-20-03 through 12.1-20-08 or of section 12.1-20-11 if the victim was under  
18       eighteen years of age at the time the offense was committed must be commenced in  
19       the proper court within twenty-one years after the commission of the offense or, if the  
20       victim failed to report the offense within this limitation period, within threeten years  
21       after the offense was reported to law enforcement authorities.
- 22       2. If, based upon evidence containing deoxyribonucleic acid or a fingerprint obtained at  
23       the time of offense, a suspect is conclusively identified by deoxyribonucleic acid  
24       testing after the time period prescribed in subsection 1 has expired, a prosecution may  
25       be commenced within threeten years after the suspect is conclusively identified by the  
26       deoxyribonucleic acid testing or fingerprint authentication.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1387

Page 1, line 1, remove ", 29-04-02,"

Page 1, line 3, remove ", felonies other than murder,"

Page 2, remove lines 3 through 12

Renumber accordingly

February 3, 2021

**Chairman Klemin and the North Dakota House Judiciary Committee**

**HB 1382**

The American Property Casualty Insurance Association (APCIA) is composed of over 1,200 member companies and 330 insurance groups and represents the broadest cross-section of home, auto, and business insurers of any national insurance trade association. In North Dakota, APCIA member insurers provide almost 69 percent of all the insurance purchased by the state's citizens and businesses.

We urge opposition to HB 1382.

On behalf of the American Property Casualty Insurance Association (APCIA), thank you for the opportunity to submit this statement regarding ND HB 1382, which would permit the revival, for two years, of time-barred civil claims in childhood sexual abuse cases.

Sexual abuse against a child is intolerable and should be punished to the full extent the law provides. These are awful crimes that have been committed against children and the people who have been hurt by these crimes need to be taken care of. We appreciate and applaud the sponsors of this bill for wanting to express a message of hope and care through this bill.

This statement today focuses only on the general principles underlying statutes of limitations, as well as the reasons why retroactive changes to these laws, and particularly reviving time-barred claims, are often viewed as unsound policy by legislatures and unconstitutional by courts.

Changes to any statute of limitations should be examined objectively based on core principles. APCIA believes that for statutes of limitations to serve their purpose of encouraging prompt and accurate resolution of lawsuits and to provide the predictability and certainty for which they are intended, they must be, at minimum finite and any changes must be prospective only. APCIA is concerned that HB 1382 in its current form, departs from these principles and may set a troubling precedent for other types of civil cases.

Statutes of limitations prevent stale claims and unnecessary delays in the presentation of issues. A plaintiff's timely filed action provides notice to the defendant and ensures that the defendant does not find itself in a situation where, because of the lapse of time, that person or organization is unable to gather the facts, evidence, and witnesses necessary to afford a fair defense.

Statutes of limitations also allow businesses and nonprofit organizations to accurately gauge their potential liability and make financial, insurance coverage, and document retention decisions fairly and accordingly.

Thank you.

Steve Schneider  
Vice President, State Affairs  
Midwest Region  
APCIA  
[Steve.schneider@apci.org](mailto:Steve.schneider@apci.org)  
312.782.7720

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Judiciary

Room JW327B, State Capitol

HB 1382

2/10/2021

Relating to limitations on actions alleging childhood sexual abuse; and to provide an expiration date.

**Chairman Klemin** called the meeting at 3:14 PM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Satrom, and Vetter. Absent: Roers Jones

### Discussion Topics:

- Current law time limit
- Suing institutions; not perpetrators
- Committee work

**Do Not Pass Motion Made by Rep. Vetter**  
**Seconded by Rep. Paur**

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	N
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	AB
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	N
Rep K. Hanson	N

Motion carried 10-3-1

Carrier: Rep. Vetter Stopped 3:27

DeLores D. Shimek Committee Clerk

**REPORT OF STANDING COMMITTEE**

**HB 1382: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1382 was placed on the Eleventh order on the calendar.