

2021 HOUSE JUDICIARY

HB 1384

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1384

2/3/2021

Relating to limitations on actions alleging childhood sexual abuse.

Chairman Klemin called the hearing to order at (9:49 AM).

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

Discussion Topics:

- Statute of Limitations Reform
- Delayed Disclosure Science
- Delayed Discovery Rule
- Private and Public Institutions

Rep. Schauer: Introduced the bill. (9:49)

Tim O’Keeffe: Attorney in Fargo: Testimony # 5095 (10:13)

Jeff Dunfor , San Diego: Testimony # 5188 (10:12)

Zach Hiner, ZAP Network: Testimony # 4670 (10:16)

Paul Hessinger: Testimony #4829 (10:20)

Katherine Robb, Child USA Advocacy: Testimony #4597 (10:24)

Ted Becker: Testimony #4212 (10:30)

Shane Goettle, State Assoc. of Nonpublic Schools: Testimony #5125

(10:31) **Additional written testimony:** #4672, #4734, #5045.

Chairman Klemin closed the hearing at (10:35).

DeLores D. Shimek
Committee Clerk

TESTIMONY FOR HOUSE BILL NO. 1384

House Judiciary Committee hearing 2/3/2021

GOOD MORNING CHAIRMAN KLEMIN and MEMBERS OF THE JUDICIARY COMMITTEE

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

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

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

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

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

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

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

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

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

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

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.

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RE: HB 1382 and 1384

Dear members of the House Judiciary Committee,

My name is Zach Hiner, and I am the Executive Director of SNAP, the Survivors Network of those Abused by Priests. Thank you for allowing me to submit testimony today on behalf of HB 1382, a critical piece of reform that we at SNAP believe will help protect children and support survivors of childhood sexual abuse.

For the past thirty years, our organization has provided support and advocacy services for victims of institutional sexual violence. We have more than 30,000 survivors in our network nationwide. While our organization was born out of the Catholic sex abuse crisis, we count among our network survivors from every faith tradition.

I am honored to serve as the Executive Director of SNAP and work with survivors as an advocate. I have heard their stories and I know that one of the typical things that victims of childhood sexual abuse have in common is a negative history with the judicial process. Limited and restrictive statutes of limitations laws exclude many from justice.

HB 1382 would help eliminate those barriers and create an opportunity for justice and prevention by opening a two-year “window to justice,” allowing previously time-barred claims to be heard.

What are the facts about abuse and SOL?

The facts about sexual violence are clear: sexual violence is a tremendously under reported crime, and when survivors do come forward, it is typically much later in the life. Estimates vary, but [data from the CDC shows that 1 in 4 girls and 1 in 13 boys will experience child sexual abuse at some point during their childhood](#). Studies show that, of those victims, [fewer than 40% will ever come forward to report their abuse and, when they do, nearly half of victims only tell a friend or family member as opposed to someone in law enforcement](#). Thanks to CHILD USA we know that the [average age of disclosure for a survivor of child sexual abuse is 52 years old](#).

These statistics combine to illustrate the fact that childhood sexual abuse is a common, yet often hidden crime. It is rare as it is often difficult for survivors to disclose while the abuse is occurring or shortly thereafter, whether due to feelings of embarrassment, guilt, a belief that the abuser cares for them, or fear due to the abuser’s position of trust and authority.

We also know that the effects of childhood sexual abuse are long-term and severe. [Studies have shown](#) that childhood sexual abuse has been correlated with higher levels of mental health problems, such as depression, anxiety, dissociative patterns, eating disorders and suicidal ideation, and physical health problems. In fact, adults with a history of child abuse are 30% more likely to have a serious medical condition like cancer or heart problems. Additionally, survivors of childhood sexual abuse also face personal issues as well such as joblessness, poverty, addiction issues, and difficulty forming close relationships.



These problems often come at a high cost, both to society and communities, but especially to the victims of sexual abuse. Through no fault of their own, many survivors have lived lives with pain, illnesses, and other adverse experiences that have resulted from being victimized as children. Survivors often are forced to spend money on therapy, medication, or medical care, treatments that are expensive and cost money that survivors too often do not have to spend.

By reforming the civil statute of limitations, we can begin to transfer some of the costs associated with abuse from the victim to the perpetrator and to those institutions which have shielded abusers.

We should open, not limit, opportunities for justice. Statute of limitation laws are, in my view, an arbitrary period. Rather than limit access to the courts based on when someone was able to confront their trauma, we believe that the courts should be open to all and any legal questions be handled within the court system on a case-by-case basis.

Why should we eliminate civil statutes?

At SNAP we believe that informed communities are safer communities, and for those in our network, the first goal of allowing claims to be brought forward is the public identification of perpetrators. When those violent sexual predators hurt children can remain hidden within the community due to statute of limitations barriers, it leaves other children at risk of abuse and the lifelong costs and adverse effects that come with that abuse.

By opening civil windows, not only are survivors provided with an opportunity to experience justice and closure, but their experiences can better inform communities and institutions about how abuse occurs and how it is hidden.

Additionally, when civil claims are filed, they often lead to other victims coming forward and filing their own cases. Sometimes, this even leads to the identification of cases that are still within the criminal statute of limitations as happened in Pennsylvania following the release of the 2018 Grand Jury report. In this way, reforming the civil statute of limitations can lead to the criminal prosecutions that in turn lead to safer communities.

As our nation has learned more about trauma and sexual violence, reforming the statute of limitations is confirmed by the survivors' reporting trends that happened in over thirty states around the country. Some states, such as Delaware and Hawaii, have even opened civil windows multiple times to give more survivors access to justice. More recently, New York, New Jersey, and Vermont have passed their own reform to statute of limitations laws, joining the 38 other states that have made reforms since 2002.

In sum, reforming the statute of limitations is a move that has strong precedent and can lead to information that can protect children and prevent future cases of abuse while giving existing survivors of abuse the support they need to heal. When survivors are empowered to seek redress through the court system, justice can be achieved.

Testimony for North Dakota House Bill 1384 by Paul Hessinger, Feb 3, 2021

People ask why survivors don't come forward sooner. Many do! I did! I told my high school principal, who was a priest. He did not receive it well. He was doing damage control. He never asked me if I was okay. He apparently told no one, and nothing happened.

I was confused, felt ashamed for reasons I didn't understand at the time, and I was anxious and afraid my peers would spread this around. I was mortified to be connected with this kind of thing that was so shocking and jarring as a kid. I lost my faith and had to find it years later.

I had no consciousness of lawsuits or suing anyone at that age. I had little money. I thought no one would believe me anyway, as I was a kid and they were adults. I tried to report it. The results were disheartening. At times I was ashamed and made to feel embarrassed. No one really listened or acted on my behalf.

I did not have the necessary worldview to see the bigger picture, to see that it was a crime, that legal justice could happen. I also did not even realize the emotional damage that had been inflicted on me.

My experience at every turn is that the justice system, courts, legislatures, police and the entire system seem to protect the predators, allowing them to roam free to abuse again. But there seems little protection for the survivors or future victims. Survivors coming forward encounter steep hurdles and roadblocks. Why? Why would anyone support that?



January 30, 2021

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

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

Dear Chairman Klemin and members of the House Judiciary Committee,

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

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

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

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

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



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

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

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

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

The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.² It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.³

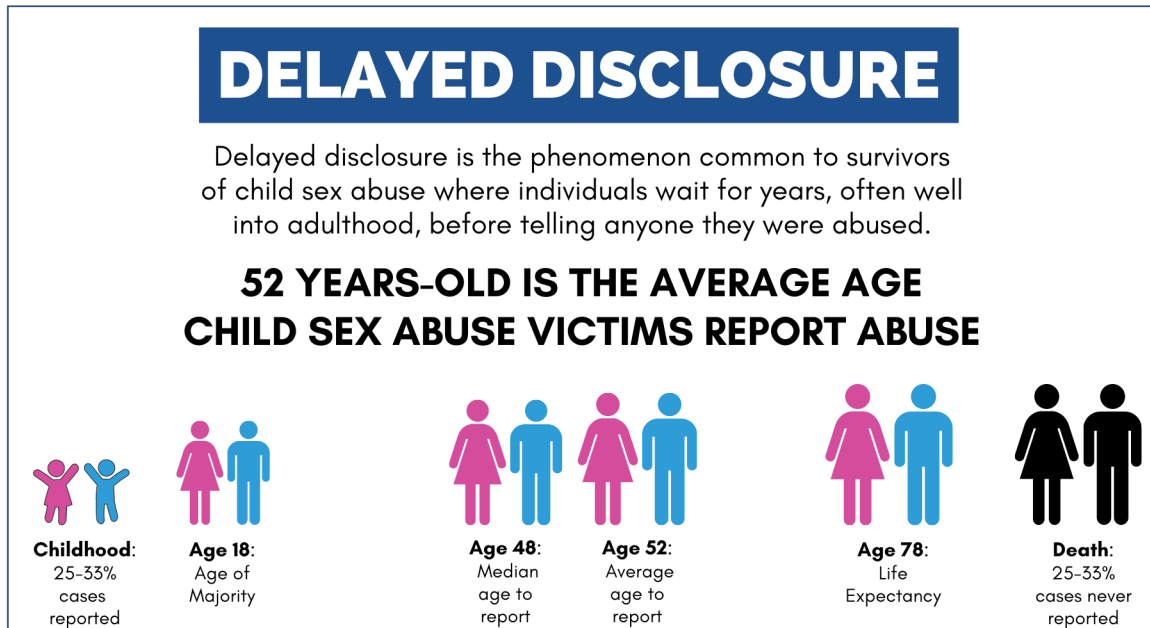
As the following graphic demonstrates, based on the best science, **age 52 is the average age child sex abuse victims tell anyone they were abused.**⁴ Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward,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

¹ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively); Preventing Child Sexual Abuse, CDC.GOV (last visited Nov. 14, 2020), available at <https://www.cdc.gov/violenceprevention/pdf/can/factsheetCSA508.pdf>; see also, D. Finkelhor, et. al., *Prevalence of child exposure to violence, crime, and abuse: Results from the Nat'l Survey of Children's Exposure to Violence*, 169(8) JAMA PEDIATRICS 746 (2015).

² van der Kolk, B. The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress. *Harvard Review of Psychiatry* (1994) 1(5), 253-65; Jim Hopper, *Why Can't Christine Blasey Ford Remember How She Got Home?*, *Scientific Amer.* (Oct. 5, 2018), available at <https://blogs.scientificamerican.com/observations/why-cant-christine-blasey-ford-remember-how-she-got-home/>; see also Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, *Justice Canada* 30 (2019), available at https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf (hereinafter "Hoskell").

³ Jacobs-Kayam, A. and Lev-Weisel, R., *In Limbo: Time Perspective and Memory Deficit Among Female Survivors of Sexual Abuse*, *Frontiers in Psychol.* (April 24, 2019) available at <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.00912/full>.

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



www.childusa.org

CHILD USA
THE NATIONAL THINK TANK FOR CHILD PROTECTION

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

It is a medical fact that victims of child sex abuse often need decades to come forward.

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

Trauma is only one of the barriers preventing children from disclosing abuse. "Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don't have an adult they can disclose their abuse to, don't have opportunities to disclose abuse, and aren't believed when they try to disclose."⁵ Studies suggest that many victims, as much as 33%, never disclose their abuse.⁶ The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over

⁵ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf> (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

⁶ *Id.*

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

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

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

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

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

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

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

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

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

⁷ Hoskell, at 24.

⁸ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

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

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

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

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

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

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

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

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

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

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

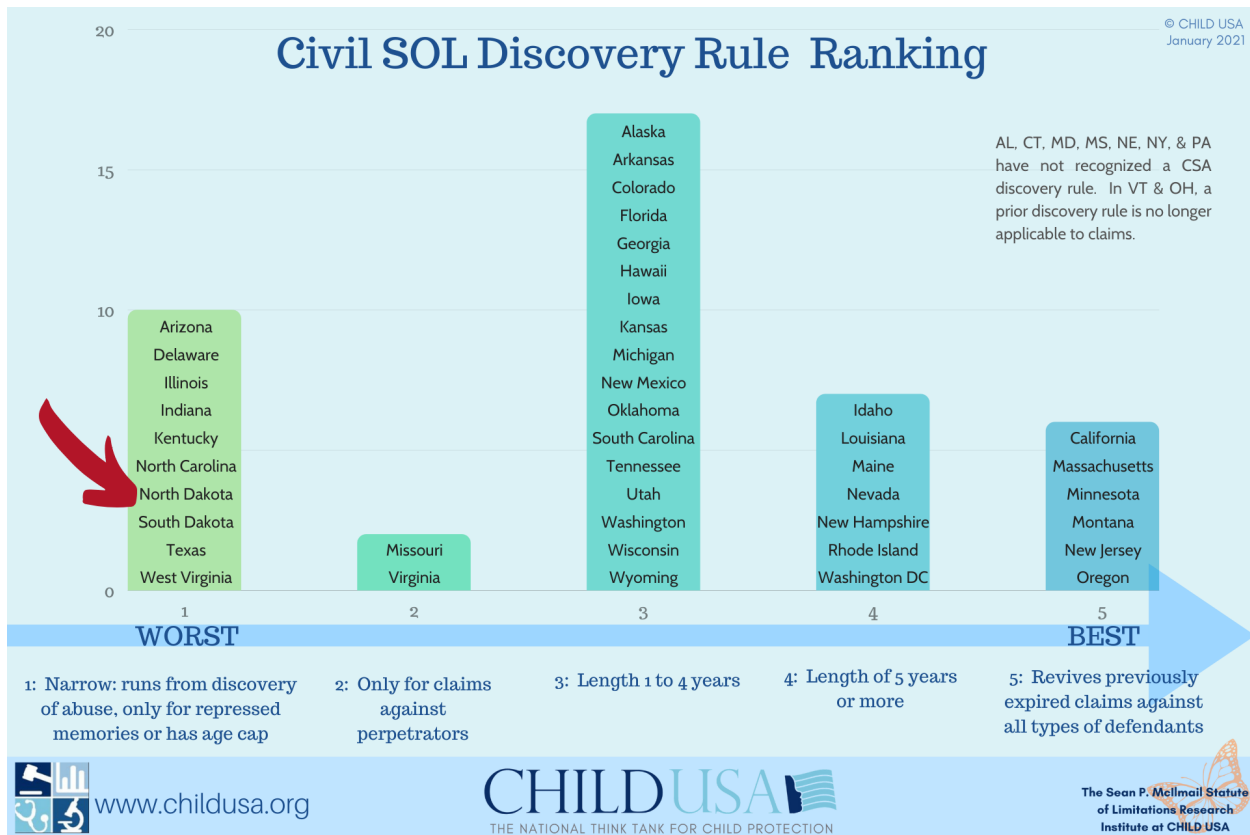
¹³ *Osland v. Osland*, 442 N.W.2d 907, 909 (N.D. 1989).

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

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

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

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



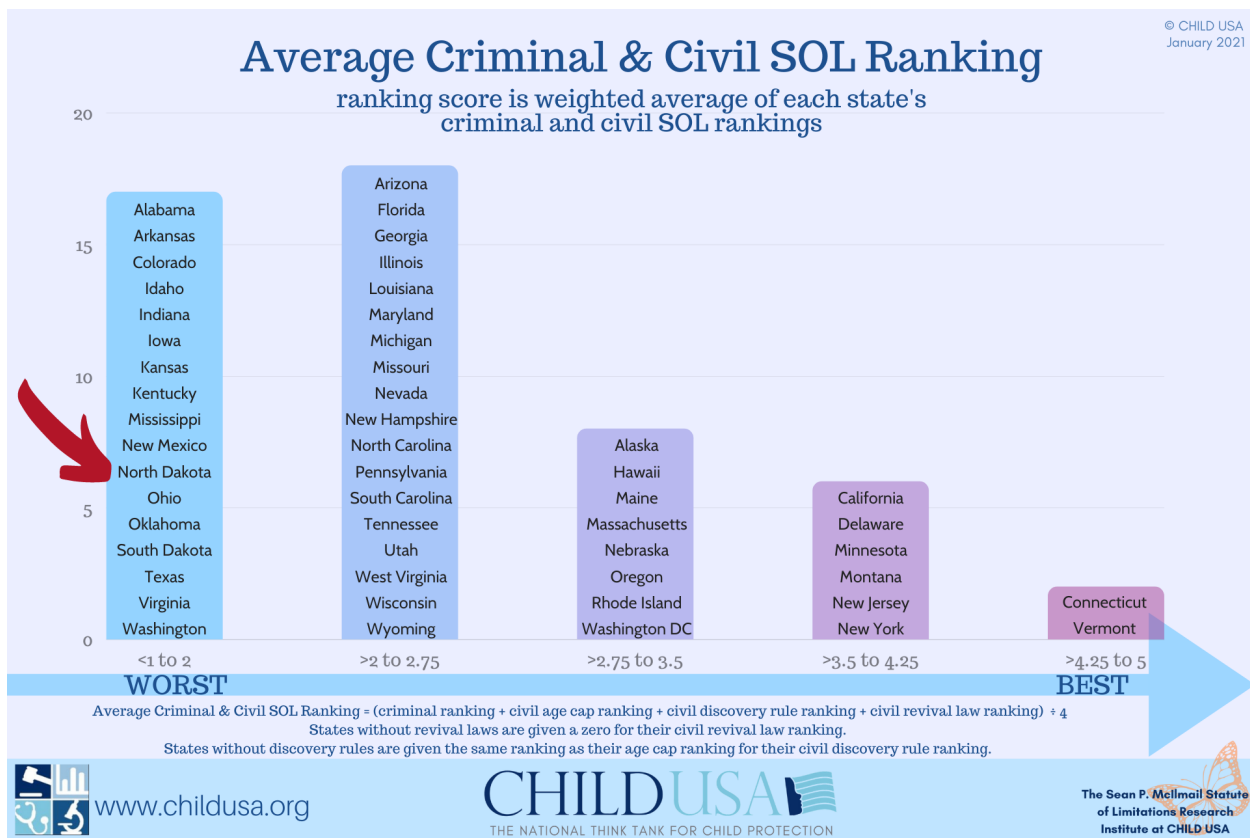
¹⁶ N.D. CENT. CODE ANN. § 28-01-25.1 (emphasis added).

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

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

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

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



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

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

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

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

Sincerely,



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



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

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!

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

Shane Goettle
Lobbyist
State Association of Nonpublic Schools;
sgoettle@odney.com
701-426-0576

HB 1384

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 1384 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.

HB 1384 proposes to start that 10 year-clock from the time a person first learns from an attorney that he or she may have a claim. Now, if a child was victimized at age 8 years, and then at age 22 learns from attorney that there is a potential claim, that person would then have until age 32 to bring the claim. But what if that same person waits until he or she is 52 years old before every talking to attorney? Then, that person would have until 62 years. This effectively ends any statute of limitations for sexual abuse claims.

At the same time, while private persons and private entities would, in effect, never enjoy a statute of limitations on sexual abuse claims, the change you are considering would not apply to state entities and political subdivisions, including public schools, which 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 subdivisions¹ 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 1384 effectively ends any 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.

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

LARRY J. RICHARDS

ATTORNEY AT LAW

711 N. Washington Street #202

Grand Forks, ND 58203

Tel: (701) 795-5100

larry.richards@lawyer.com

February 1, 2021

To: Representative Lawrence Klemin
Chairman, North Dakota House of Representative Committee on
Judiciary

From: Larry Richards, Attorney at Law

RE: Testimony Regarding House Bill No. 1384—Limitation on actions alleging sexual abuse

Mr. Chairman and members of the committee I have reviewed this proposed bill and wanted to express my opposition to its enactment—as written.

First, as a private practice attorney, I do not relish the idea of being brought into Court to testify about whether or not I advised someone years ago during a free consultation about whether they had potential cause of action.


Second and most significantly, I would like to note the practical impact of this legislation, which is that it effectively eliminates this statute of limitation. I say this because I would highly suspect that virtually every plaintiff in this sort of case would merely say that the attorney sitting next to them (i.e. the attorney currently representing them in the lawsuit) was the one who made them fully realize not that long ago that they had a cause of action.

Now, let me be clear, I do not oppose extending or even eliminating this statute of limitation. However, I believe that if that is what is intended then we should just be “academically honest” with ourselves and just eliminate it rather than just have one on the books that doesn’t really mean anything.

Finally, please note that, while I am an attorney, I present this testimony in my individual capacity. I do not present this testimony on behalf on any individual, corporation or other entity. I have not and will not receive any compensation for the presentation of this testimony.

Thank you for your time and consideration as well as your service to the State of North Dakota

Sincerely,


Larry J. Richards
Attorney at Law

Good Morning again Chairman Klemin and members of the House Judiciary Committee.

For the record, my name is Austen Schauer, representing District 13 in West Fargo.

I am asking today for a **Do Pass** on **House Bill 1384** which will *clarify* a section of law dealing with statute of limitations for childhood sexual abuse victims and their opportunity to file a civil lawsuit against the abuser.

We believe **HB 1384** makes it clear when the ten-year statute of limitations begins and ends for a survivor of this horrendous crime.

Currently, on page one, beginning on line seven, it says,

*“Notwithstanding section 28-01-25, 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.”*

How is “**should have known**” defined? Who determines it and what expertise do they have especially when it comes to a crime against a child?

The Department of Justice says **86%** of child sexual abuse goes **unreported** and when victims are ready to come forward with a civil or criminal complaint, the average age is **52 years old** according to **Child USA** and its’ survey of one thousand survivors.

House Bill 1384 makes this change on one page one, lines 7 through 9:

“Notwithstanding section 28-01-25, a claim for relief resulting from childhood sexual abuse must be commenced within ten years after the plaintiff ***was advised by a licensed North Dakota attorney*** that a potential claim exists resulting from alleged childhood sexual abuse.”

I believe this change makes it clear to survivors of when the ten-year statute of limitations begins giving them ample time to seek justice if they choose.

Mr Chairman, we have several people following me to testify on **HB 1384**, but I am certainly here to answer any question you or your committee may have.

Thank you.



Testimony in Support of House Bill 1384

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 1384, 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.¹

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.² Based on 2018 statistics, other facts about child abuse include:³

- 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."⁴

1515 Burnt Boat Drive, Suite C148
Bismark, ND 58530

P 866.655.4545

UNLEASHING CITIZENSHIP

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."⁵

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 1384 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 1384 out of committee with a "DO PASS".

I would now be happy to stand for any questions.

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

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

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

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

⁵ *ibid*

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary

Room JW327B, State Capitol

HB 1384

2/10/2021

Relating to limitations on actions alleging childhood sexual abuse.

Chairman Klemin called the meeting to order at 3:28 PM

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

Discussion Topics:

- Committee work

Do Pass Motion Made by Rep. Magrum
Seconded by Rep. Satrom

Roll Call Vote:

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

3-10-1 Failed

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

Roll Call Vote:

Representatives	Attendance
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	Y
Representative Ruth Buffalo	N
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Karla Rose Hanson	N
Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	N
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	AB
Representative Bernie Satrom	Y
Representative Steve Vetter	Y

10-3-1 Carrier: Rep. Vetter

Stopped 3:40

DeLores D. Shimek
Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1384: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1384 was placed on the Eleventh order on the calendar.