

CARDOZO LAW

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March 6, 2013

Hon. Rep. John Lesch, Chair
House of Representatives Civil Law Committee
10 State Office Building (SOB)
100 Rev. Dr. Martin Luther King, Jr. Drive
St. Paul, MN 55155-1606

RE: Hearing on Minnesota Senate Bill 534 and House Bill 681, Sexual abuse civil actions limitation period modification (Wednesday, March 6, 2013 - 8:15AM)

Dear Chairman Lesch and Committee Members:

I commend the Committee for taking up S.F. 534 and H.F. 681, also known as the “Child Victims Act,” which would eliminate the statute of limitations for civil actions brought by minor victims of sexual offenses. Statute of limitations reform is the one tried and true means that will identify the many hidden child predators who are grooming children in California right now. **If passed, S.F. 534 and H.F. 681 will add Minnesota to the growing list of states that are opening the doors of justice for child sex abuse victims.**

This bill is a sunshine law for children. There is an epidemic of child sex abuse around the world. At least one in four girls is sexually abused and about one in five boys. Historically, 90% of child victims never go to the authorities and the vast majority of claims expire before the victims are capable of getting to court. Most victims are abused by family or family acquaintances. The Child Victims Act would protect the children of Minnesota by making it possible for victims to come forward and identify their perpetrators in a court of law. It would also bring delayed, but still welcome, justice to these victims. Given that most child perpetrators abuse many children over the course of their lives,¹

¹ KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 10, 52 (5th ed. 2010) available at http://www.cybertipline.com/en_US/publications/NC70.pdf. (“Except for child prostitution, most sexual-exploitation-of-children cases in the United States involve acquaintance molesters who rarely use physical force on their victims. . . . Although a variety of individuals sexually abuse children, preferential-type sex offenders, and especially pedophiles, are the primary acquaintance sexual exploiters of children. A preferential-acquaintance child molester might molest 10, 50, hundreds, or even thousands of children in a lifetime, depending on the offender and how broadly or narrowly child molestation is defined. Although pedophiles vary greatly, their sexual behavior is repetitive and highly predictable.”)

SOL elimination does far more than create justice for today’s victims. It also forestalls the abuse of tomorrow’s children.

By way of introduction, I hold the Paul R. Verkuil Chair in Public Law at the Benjamin N. Cardozo School of Law, Yeshiva University, where I specialize in church/state relations and constitutional law. My recent book, *Justice Denied: What America Must Do to Protect Its Children* (Cambridge University Press 2008, 2012), makes the case for statute of limitations reform in the child sex abuse arena. I am the leading expert on the history and constitutionality of retroactive statutes of limitations with respect to child sex abuse and have advised many child sex abuse victims on constitutional issues, and testified in numerous states where SOL reform is being considered. I also track the SOL movement in all 50 states on my website, www.sol-reform.com.

The definite trend in the United States is to eliminate child sex abuse SOLs prospectively and retroactively. Why? Because justice demands it. There are three compelling public purposes served by the removal of SOLs for child sexual abuse:

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;
- (2) It gives child sex abuse survivors a fair chance at justice; and
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.

For a number of years, I have tracked statute of limitations reform. This is the only tried and true method of identifying the many hidden child predators. As Professor Timothy Lytton has documented, civil tort claims have been the only means by which survivors of clergy abuse have been able to obtain any justice. Timothy Lytton, *Holding Bishops Accountable: How Lawsuits Helped the Catholic Church Confront Sexual Abuse* (Harvard University Press, 2008). The same is true in cases involving universities like Penn State, Poly Prep Country Day School in Brooklyn, NY, and public school districts like the Los Angeles school district.

This is a vibrant national movement to protect our children. Legislative reform for statutes of limitations for child sex abuse victims is on the rise. Hawaii extended its civil SOL and enacted a 2-year retroactive civil “window,” which went into effect in April 2012.² Delaware eliminated both the civil and criminal SOLs and enacted a two-year window, which was open from July 2007 to 2009.³

² Hawaii Act 068 (12), *formerly* S.B. 2588, 2012 Leg. Sess. (Haw. 2012) (enacted April 24, 2012) (extended and tolls statute of limitations for civil actions brought by minor victims of sexual offenses; *and* reviving via a civil “window” for two (2) years some actions for which the statute of limitations had previously lapsed).

³ DEL. CODE ANN. 10 § 8145 (a)-(b) (2007) (civil); 11 DEL. CODE ANN. 11 § 205 (criminal).

Virginia⁴ also enacted legislation dramatically extending its civil statutes of limitations in 2011, while Florida eliminated the civil statute of limitations for sexual battery of a child in 2010.⁵ Alaska,⁶ Connecticut⁷ and Maine,⁸ already eliminated their civil statutes of limitations for child sex crimes, while Pennsylvania extended its criminal SOL to age 50 in 2006,⁹ and its civil SOL to age 30 in 2002¹⁰, and Illinois enacted an extension in 2010.¹¹ California had an open window during calendar year 2003.¹² Even our Territories have become involved with Guam's bill removing the civil SOLs and creating a two-year "window" going into effect in 2011.¹³

Although the 2013 legislative session has just begun, Arkansas already has eliminated its criminal SOLs.¹⁴ Bills that would eliminate SOLs, or open windows, are pending in Massachusetts,¹⁵

⁴ VA. CODE ANN. § 8.01-243(D) (2011), *formerly* H.B. 1476, 2011 Gen. Assemb., 2011 Reg. Sess., (enacted) (extending the limitations period for actions for sexual abuse committed during the infancy or incapacity of the abused person from two years to 20 years from the time of the removal of the infancy or incapacity or from the time the cause of action otherwise accrues).

⁵ FLA. STAT. ANN. § 95.11(7) (2010) (enacted) (eliminating statute of limitations for sexual battery if victim was under 16 years old, for claims not barred as of July 2010).

⁶ ALASKA STAT. § 09.10.065 (no SOL for claims arising out of for felony sex abuse/assault of minor, felony exploitation of minor).

⁷ CONN. GEN. STAT. § 52-577e (no SOL if events forming the civil claim led to conviction for first-degree aggravated sexual or sexual assault).

⁸ ME. REV. STAT. ANN. tit. 14, § 752-C (1) (no SOL for any actions based on sex acts against minors).

⁹ 42 PA. CONS. STAT. ANN. § 5552(c)(3) (2008).

¹⁰ 42 PA. CONS. STAT. ANN. § 5533 (2012).

¹¹ 735 ILL. COMP. STAT. 5/13-202.2 (2010) (enacted) (expanding statute of limitations for injury based on childhood sexual abuse to within 20 (previously 10) years of the date the limitation period begins to run or within 20 (previously 5) years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and the injury was caused by that abuse).

¹² CA. CIV. PROC. CODE § 340.1(c)

¹³ Bills No. B033 & B034-31(COR), Acts To Amend § 11306 Of Article 3, Chapter 11, Title 7 Of The Guam Code Annotated; Relative To The Statute Of Limitations For Civil Actions Involving Child Sexual Abuse, removing the statute of limitations and establishing a two-year window of opportunity for child sex abuse victims whose claims have expired under the Guam statute of limitations to bring their civil claims, now Public Laws No. 31-06 & 31-07 (2011); Erin Thompson, *Sex Abuse Bills Now Public Law*, PACIFIC DAILY NEWS (Mar. 10, 2011), available at <http://www.guampdn.com/article/20110310/NEWS01/103100301/Sex-abuse-bills-now-public-law>.

¹⁴ S.B. No. 92, 2013 Gen. Assemb., 89th Gen. Assem. (Ark. 2013) (enacted, Feb. 22, 2013) (eliminating limitation of time for bringing a criminal action with respect to child sex abuse), <http://www.arkleg.state.ar.us/assembly/2013/2013R/Bills/SB92.pdf>. See, KATV.com (ABC), *Statute of Limitation dropped on child sex crimes*, (Feb. 22, 2013), <http://www.katv.com/story/21310684/statute-of-limitation-dropped-on-child-sex-crimes>

¹⁵ Bill H.1455, 2013 Reg. Session, 188th Gen. Sess. Mass. Legis. (Mass. 2013) (pending) (extends limitations period for prospective claims, and creates a 1 year "window" to revive time-barred claims); Bill S.633, 2013 Reg Session, 188th Gen. Sess. Mass. Legis. (Mass. 2013) (pending) (retroactively and prospectively extending limitations period for child sex abuse).

California,¹⁶ Pennsylvania,¹⁷ Missouri,¹⁸ Nevada,¹⁹ New Jersey,²⁰ Oregon,²¹ and New York.²² In addition, both Illinois and Pennsylvania are currently considering elimination despite relatively recent extensions.²³

Some have argued that retroactive legislation is unconstitutional. While such an implication was true in the nineteenth century, it is no longer true under the federal Constitution, as the United States Supreme Court has explained: “The presumption against statutory retroactivity had special force in the era in which courts tended to view legislative interference with property and contract rights circumspectly. In this century, legislation has come to supply the dominant means of legal ordering, and circumspection has given way to greater deference to legislative judgments.” Landgraf v. USI Film Prods., 511 U.S. 244, 272 (1994); see also Republic of Austria v. Altmann, 541 U.S. 677 (2004).

It is true that retroactive revival of *criminal* statutes of limitations is unconstitutional,²⁴ but retroactive revival of civil SOLs has been held to be permissible by the Supreme Court since *Landgraf*

¹⁶ S.B. 131, 2013 Reg. Sess, 2013-2104 Legis. Sess. (Cal. 2013) (extends statute of limitations for prospective claims and creates a one-year window to revive previously time-barred claims).

¹⁷ H.B. 237, 221st Gen. Assemb., 2013 Reg. Sess. (Pa. 2013) (pending) (eliminates the statute of limitations for number of enumerated criminal offenses involving child sexual abuse); H.B. 238, 221st Gen. Assemb., 2013 Reg. Sess. (Pa. 2013) (pending) (establishes civil “window” which allows any suit that was previously barred from court solely on statute of limitations grounds to commence within the two-year period).

¹⁸ H.B. No. 247, 97th Gen Assemb., 1st Gen Sess. (Mo. 2013) (pending) (eliminating the statute of limitations in both civil and criminal actions)

¹⁹ S.B. 103, 2013 Legis. 77th Reg. Sess. (Nev. 2013)(pending) (eliminating the statute of limitations in criminal actions)

²⁰ No. A.2405, 214th Legis. Sess., 2011-2012 Reg. Sess. (N.J. 2012) (pending) (eliminating civil statute of limitations for child sex abuse). A new bill, including a civil “window” in New Jersey is set to be introduced soon in the 2013 Legislative Session.

²¹ H.B. 3284, 77th Legis. Assemb., 2013 Reg. Sess. (Or. 2013) (pending) (eliminates statute of limitations for certain sex crimes committed against minors)

²² No. A01771, 235th Gen. Assemb., 2013 Reg. Sess. (N.Y. 2013) (pending) (extending the statute of limitations in criminal and civil actions for certain sex offenses committed against a child less than eighteen years of age, and creating a one year civil “window”).

²³ H.B. No. 1063, 98th Gen. Assemb., 2013-2014 Reg. Sess. (Ill. 2013) (eliminates the criminal statute of limitations for child sex abuse); S.B. No. 1399, 98th Gen. Assemb., 2013-2014 Reg. Sess. (Ill. 2013) (eliminates the civil statute of limitations for actions arising from child sex abuse); 2013 H.B. No. 237, 197th Gen. Assemb., 2013-2014 Reg. Sess. (Pa. 2013) (eliminates the civil and criminal statutes of limitation for actions arising from child sex abuse); 2013 H.B. No. 238, 197th Gen. Assemb., 2013-2014 Reg. Sess. (Pa. 2013) (tolling the statutes of limitation for civil actions arising from child sex abuse).

²⁴ *Stogner v. California*, 539 U.S. 607 (2003).

and is constitutional in an ever-growing majority of states,²⁵ including Minnesota. See, Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002).

Any claim that SOL reform leads to diocesan bankruptcies is irresponsible. First, extension and elimination of SOLs have never led to a bankruptcy filing. Second, window legislation has been followed by only two bankruptcies, one in San Diego and the other in Wilmington, DE. In both cases, the bankruptcy was voluntary, and was intended to protect assets and avoid trials that would have revealed the Roman Catholic hierarchy's secrets regarding their role in endangering children. These bankruptcies were not filed because the dioceses were actually indigent.²⁶ In San Diego, the bankruptcy court publicly stated that the diocese was not honest about its actual wealth and that there was no justification for the bankruptcy filing. The Wilmington bankruptcy settled, and the settlement includes remuneration for victims for the Diocese's cover up of child sex abuse predators, and just as important, an agreement to release the identities of those priests who have been accused of abuse and to improve child protection into the future. Without the window, children would be far less protected than they are now in Wilmington.²⁷

SOL reform has very few detractors other than the Catholic bishops, who have misleadingly argued that reform is unconstitutional on the theory that it "targets" the Church. SOL reform does not target any particular perpetrator or organization. Indeed, many of these victims are victims of incest, and others are victims who were subjected to abuse at universities, in day care centers, and anywhere a child can be found. A federal court persuasively upheld the first California window against such an

²⁵ The majority of states has not found retroactive statutes of limitations unconstitutional. See Catholic Bishop of N. Alaska v. Does, 141 P.3d 719 (Alaska 2006); San Carlos Apache Tribe v. Superior Court ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999), superseded by statute, Arizona Rev. Stat. § 12-505 (2010); Deutsch v. Masonic Homes of California, Inc., 164 Cal. App. 4th 748, 760, 80 Cal. Rptr. 3d 368, 378 (Cal. Ct. App. 2008); Liebig v. Superior Court, 257 Cal. Rptr. 574 (Cal. Ct. App. 3d 1989); Mudd v. McColgan, 183 P.2d 10 (Cal. 1947); Shell Western E&P, Inc. v. Dolores County Bd. of Comm'rs, 948 P.2d 1002 (Colo. 1997); Rossi v. Osage Highland Dev., LLC, 219 P.3d 319 (Col. App. 2009) (citing In re Estate of Randall, 441 P.2d 153, 155 (Col. 1968)); Roberts v. Caton, 619 A.2d 844 (Conn. 1993); Whitwell v. Archmere Acad., Inc., C.A. No: 07C-08-006 (RBY), 2008 Del. Super. LEXIS 141 (Del. Super. Ct. April 16, 2008); Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229 (D.C. 1990); Vaughn v. Vulcan Materials Co., 465 S.E.2d 661 (Ga. 1996); Gov't Employees Ins. Co. v. Hyman, 975 P.2d 211 (Haw. 1999); Roe v. Doe, 581 P.2d 310 (Haw. 1978); Henderson v. Smith, 915 P.2d 6 (Idaho 1996); Hecla Mining Co. v. Idaho State Tax Comm'n, 697 P.2d 1161 (Idaho 1985); Metro Holding Co. v. Mitchell, 589 N.E.2d 217 (Ind. 1992); Ripley v. Tolbert, 921 P.2d 1210 (Kan. 1996); Shirley v. Reif, 920 P.2d 405 (Kan. 1996); Kienzler v. Dalkon Shield Claimants Trust, 686 N.E.2d 447 (Mass. 1997); Rookledge v. Garwood, 340 Mich. 444 (Mich. 1954); Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413 (Minn. 2002); Cosgriffe v. Cosgriffe, 864 P.2d 776 (Mont. 1993); Panzinov. Continental Can Co., 364 A.2d 1043 (N.J. 1976); Alsenz v. Twin Lakes Village, 843 P.2d 834 (Nev. 1992); Bunton v. Abernathy, 73 P.2d 810 (N.M. 1937); Hymowitz v. Eli Lilly & Co., 539 N.E.2d 1069 (N.Y. 1989); In Interest of W.M.V., 268 N.W.2d 781 (N.D. 1978); Pratte v. Stewart, 929 N.E.2d 415 (Ohio 2010); McFadden v. Dryvit Systems, Inc., 112 P.3d 1191, 1195 (Or. 2005); McDonald v. Redevelopment Auth., 952 A.2d 713, 718 (Pa. Commw. Ct. 2008); Bible v. Dep't of Labor and Indus., 696 A.2d 1149 (Pa. 1997); Stratmeyer v. Stratmeyer, 567 N.W.2d 220 (S.D. 1997); Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 146 P.3d 914 (Wash. 2006) superseded by statute, Wash. Rev. Code 25.15.303, as recognized in Chadwick Farms Owners Ass'n v. FHC, LLC, 160 P.3d 1061 (Wash. 2007); Neiman v. Am. Nat'l Prop. & Cas. Co., 613 N.W.2d 160 (Wis. 2000) (open question); RM v. State Dept. of Family Servs., Div. of Public Servs., 891 P.2d 791, 792 (Wyo. 1995).

²⁶ For a fact-based analysis of how American Catholic dioceses have dealt with their finances and their wealth, see <http://www.economist.com/node/21560536>.

²⁷ BISHOP MALOOLY ISSUES STATEMENT ON THE FILING OF THE AMENDED PLAN OF REORGANIZATION, <http://www.cdowreorganization.com/> (last visited Mar. 4, 2013).

argument. See Melanie H. v. Defendant Doe, No. 04-1596-WQH-(WMc), slip op. (S.D. Cal. Dec. 20, 2005).

The injuries a particular child sex abuse victim may suffer are extensive. Researchers in various studies have found -- specifically in men who were sexually abused as children -- that long-term adaptation will often include sexual problems, dysfunctions or compulsions, confusion and struggles over gender and sexual identity, homophobia and confusion about sexual orientation, problems with intimacy, shame, guilt and self-blame, low self-esteem and negative self images and increased anger. There is also an increased rate of substance abuse, a tendency to deny and de-legitimize the traumatic experience, symptoms of Post Traumatic Stress Disorder, and increased probability of fear and depression.

Hundreds of research studies have shown conclusively that sexual abuse can alter a child's physical, emotional, cognitive and social development and impact their physical and mental health throughout his or her lifetime.²⁸ A 2002 study examined same-sex twins where one was sexually abused as a child and one was not.²⁹ The study found that a person with a history of childhood sexual abuse had an increased risk for major depression, suicide attempts, conduct disorders, alcohol and/or nicotine dependence, social anxiety, rape after the age of 18 years-old, and divorce.³⁰

Men are close to twice as likely to suffer from major depression if they were sexually abused as children, compared with those who were not abused. Women and men who were sexually abused as children are roughly five times more likely to attempt suicide, compared to those people that were not abused.³¹ These adverse outcomes alone make it very difficult for victims of childhood sexual abuse to discover that the sexual acts were abuse and to discover the cause of their injuries because many simply struggle to survive the onset of drug or alcohol abuse, major depression, and suicide attempts.

Often it is not until years after the sexual abuse that victims experience these negative outcomes:

Some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later. . . .³²

²⁸ Elliot Nelson et. al., Association Between Self-reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results From a Twin Study, 59(2) ARCHIVES OF GENERAL PSYCHIATRY, 139, 139-45 (2002).

²⁹ Id. at 139-44.

³⁰ Id. at 142.

³¹ Ibid.

³² Mic Hunter, Psy.D., Abused Boys, 59 (1991).

Minnesota pays the price of abuse in several ways. First, the state suffers from reduced productivity from victims, because they have been disabled by the abuse. To the extent that they are not made whole, they are producing less tax-generating income. The fact that Minnesota shuts off civil claims before victims are ready to come forward means that many victims have no chance to achieve justice and, therefore, are more likely to suffer serious depression and illness. Second, Minnesota bears the cost of divorces, broken homes, and suffering children, which are a sadly prevalent fact in many survivors' lives. This creates a drag on local school districts that must provide counseling and guidance for troubled youth, the state agencies that deal with troubled families, and local authorities. Third, the survivors' medical bills generated by the abuse, whether it is psychological or physical treatment, are likely to have to be subsidized by state and federal medical programs and funds.

Minnesota currently provides only a six-year (6) statute of limitations from the age of majority. Survivors typically need decades, which means Minnesota currently has a time limit that is too short for them to process the information, obtain the needed counseling to be ready to considering go to court, and then to find an attorney and proceed to the judicial process. These bills offer an opportunity for justice. They do not change the burden of proof, however, so survivors will still need evidence to go forward. Many reliable studies show that false claims of child sex abuse are very rare.

Once again, I applaud the Committee for considering this legislation. Minnesota's children deserve the passage of statute of limitations reform to protect children today and in the future, and to achieve justice for the many victims suffering in silence. S.F. 534 and H.F. 681 represent a huge step forward for Minnesota's children.

Please do not hesitate to contact me if you have questions regarding window legislation or if I can be of assistance in any other way.

Sincerely,



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