CHILD USAdvocacy

CHILD USA
THE NATIONAL THINK TANK FOR CHILD PROTECTION

TO: Honorable Members of the House Business and Labor Committee

FROM: Marci Hamilton, Founder & CEO, CHILD USA; Professor, University of Pennsylvania, and Kathryn Robb, Executive Director, CHILD USAdvocacy

RE: H.J.R. 4: A Proposal to Amend Utah Constitution—Legislative Power Relating to Civil Action for Child Sexual Abuse

DATE: January 2, 2022

Dear Honorable Members of the House Business and Labor Committee,

Thank you for allowing us[1] to submit testimony in support of H.J.R. 4, which will amend the Utah Constitution to empower the legislature to provide for the revival of statutes of limitation ("SOLs") for civil claims of child sexual abuse ("CSA"). This legislation will not only bring long overdue justice to survivors, but it will also greatly reduce the present danger to children in Utah by exposing hidden predators who are still abusing children today, while educating the public about the systematic failures that endanger Utah's children.

Our organizations' reasons for supporting HB 279 in 2016, which created a revival window for survivors that was ultimately struck down as unconstitutional, remain compelling. H.J.R. 4 simply provides the necessary procedural pathway – amendment of the Constitution – to serve the interests already embraced by this body.

I. Research on Trauma and Delayed Disclosure Supports SOL Reform for CSA

A. There is a Nationwide Epidemic of CSA Causing Lifelong Damage to Victims

Currently, more than 10% of children are sexually abused, with at least one in five girls and one in thirteen boys sexually abused before they turn 18.[2] CSA is a social problem that occurs in all social groups and institutions, including familial, religious, educational, medical, and athletic. Nearly 90% of CSA perpetrators are someone the child knows; in fact, roughly one third of CSA offenses are committed by family members.[3]

The trauma stemming from CSA is complex and individualized, and it impacts victims throughout their lifetimes:[4]

- Childhood trauma, including CSA, can have **devastating impacts on a child's brain**,[5] including disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease, such as post-traumatic stress disorder (PTSD)[6]; and disability.[7]

- CSA victims suffer an **increased risk of suicide**—in one study, female CSA survivors were two to four times more likely to attempt suicide, and male CSA survivors were four to 11 times more likely to attempt suicide.[8]

- CSA leads to an increased risk of **negative outcomes across the lifespan**, such as alcohol problems, illicit drug use, depression, marriage issues, and family problems.[9]

B. CSA Victims Commonly Delay Disclosure of Their Abuse for Decades

Many victims of CSA suffer in silence for decades before they talk to anyone about their traumatic experiences. As children, CSA victims often fear the negative repercussions of disclosure, such as disruptions in family stability, loss of relationships, or involvement with the authorities.[10] Additionally, CSA survivors may struggle to disclose because of trauma and psychological barriers such as shame and self-blame, as well as social factors like gender-based stereotypes or the stigma surrounding victimization.[11] Further, many injuries resulting from CSA do not manifest until survivors are well into adulthood. These manifestations may coincide with difficulties in functioning and a further delay in disclosure of abuse.

Moreover, disclosure of CSA to the authorities for criminal prosecution or an attorney in pursuit of civil justice is a difficult and emotionally complex process, which involves the survivor knowing that he or she was abused, being willing to identify publicly as an abuse survivor, and deciding to act against their abuser. In light of these barriers to disclosure, it is not surprising that:

- In one study, 44.9% of male victims and 25.4% of female victims of CSA delayed discussing their abuse with anyone **by more than 20 years**.[12]

- Between **70% and 95%** of child sexual assault victims **never report** the abuse to authorities.[13]

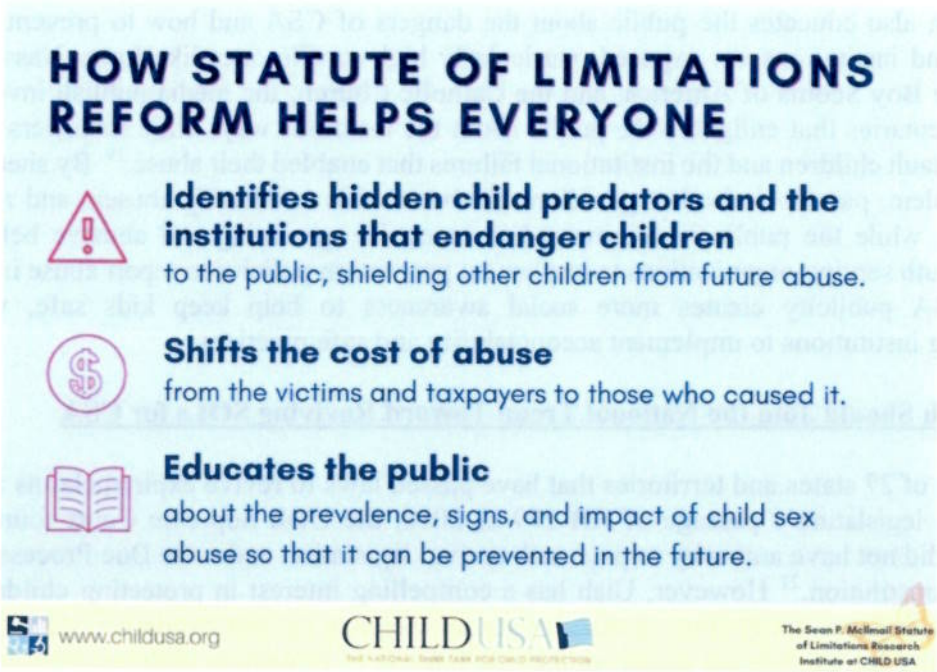
- Research has found a **higher rate of PTSD** symptoms in CSA victims delaying disclosure compared to those who did not delay disclosure.[14]

For both children and adults, disclosure of CSA trauma is a process and not a discrete event in which a victim comes to terms with their abuse.[15] To effectively protect children from abuse, CSA laws must reflect this reality.

II. SOL Reform Serves the Public Good by Giving Survivors Access to Justice and Preventing Future Abuse

Historically, a wall of ignorance and secrecy has been constructed around CSA, which has been reinforced by short SOLs that kept victims out of the legal system. Short SOLs for CSA play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment and leave future children vulnerable to preventable sexual assault.

There is a vibrant national and global movement to eliminate civil and criminal SOLs and revive expired civil claims as a solution to the CSA epidemic.[16] **There are three compelling public purposes served by the child sexual abuse SOL reform movement**, which are explained in the graphic below:



A. SOL Reform Identifies Hidden Child Predators and Institutions that Endanger Children

It is in society's best interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. The decades before public disclosure give perpetrators and institutions wide latitude to suppress the truth to the detriment of children, parents, and the public. Some predators abuse a high number of victims and continue abusing children well into their elderly years. For example, one study found that 7% of offenders sampled committed offenses against 41 to 450 children, and the highest time between offense to conviction was 36 years.[17] By allowing claims for past abuse to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children.

B. SOL Reform Shifts the Cost of Abuse

CSA generates staggering costs that impact the nation's health care, education, criminal justice, and welfare systems. The estimated lifetime cost to society of child sexual abuse cases occurring in the United States in 2015 is $9.3 billion, and the average cost of non-fatal per female victim was estimated at $282,734. Average cost estimates per victim include, in part, $14,357 in child medical costs, $9,882 in adult medical costs, $223,581 in lost productivity, $8,333 in child welfare costs, $2,434 in costs associated with crime, and $3,760 in special education costs. Costs associated with suicide deaths are estimated at $20,387 for female victims.[18]

It is unfair for the victims, their families, and Utah taxpayers to be the only ones who bear this burden; these changes level the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers.

C. SOL Reform Educates the Public to Prevent CSA

SOL reform also educates the public about the dangers of CSA and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the media publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse.[19] By shedding light on the problem, parents and other guardians are better able to identify abusers and responsible institutions, while the public is empowered to recognize grooming and abusive behavior and pressure youth serving organizations to implement prevention policies to report abuse in real time. Indeed, CSA publicity creates more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

III. Utah Should Join the National Trend Toward Reviving SOLs for CSA

Utah is one of 27 states and territories that have passed laws to revive expired claims for CSA.[20] Despite the legislature's passage of HB 279 in 2016, the Utah Supreme Court found that the legislature did not have authority to pass such revival legislation under the Due Process Clause of the Utah Constitution.[21] However, Utah has a compelling interest in protecting children.[22] That interest is even more compelling in cases of sexual violence against children.[23] H.J.R. 4 creates an opportunity for Utah to act on its compelling interest in protecting children from preventable sexual abuse by holding responsible parties accountable.

IV. Conclusion

Once again, we commend you for supporting this legislation, which is desperately needed to validate adult survivors of CSA and protect Utah children from preventable sexual abuse. Clarifying the legislature's power to revive expired claims is a positive step for Utah'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.
Founder & CEO
CHILD USA
3508 Market Street, Suite 202
Philadelphia, PA 19104
mhamilton@childusa.org
(215) 539-1906

Kathryn Robb, Esq.
Executive Director
CHILD USAdvocacy
3508 Market Street, Suite 201
Philadelphia, PA 19104
krobb@childusadvocacy.org
(781) 856-7207

[1] By way of introduction, Professor Marci Hamilton is a First Amendment constitutional scholar at the University of Pennsylvania who has led the national movement to reform statutes of limitations to reflect the science of delayed disclosure of childhood sexual abuse and who founded CHILD USA, a national nonprofit think tank devoted to ending

child abuse and neglect. Kathryn Robb is the Executive Director of CHILD USAdvocacy, an advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. Kathryn is also an outspoken survivor of child sex abuse.

[2] 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 CSA 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 CSA 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 CSA among North American boys and girls respectively).

[3] Perpetrators often being parents, stepparents, siblings, and grandparents. Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19 (2007); David Finkelhor & Anne Shattuck, *Characteristics of Crimes Against Juveniles*, University of New Hampshire, Crimes Against Children Research Center (2012), available at http://www.unh.edu/ccrc/pdf/CV26_Revised%20Characteristics%20of%20Crimes%20against%20Juveniles_5-2-12.pdf.

[4] B. A. van der Kolk, *The Body Keeps the Score: Memory & the Evolving Psychobiology of Posttraumatic Stress,* 1(5) HARVARD REV. OF PSYCHIATRY 253-65 (1994); *see also* Hoskell, L. & Randall, M., *The Impact of Trauma on Adult Sexual Assault Victims*, JUSTICE CANADA (2019), https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf.

[5]As explained by the Center for Disease Control, "Adverse Childhood Experiences" ("ACEs"), like CSA, "have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity." Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14(4) AM. J. PREV. MED. 245 (1998); S.R. Dube et al., *Childhood Abuse, Household Dysfunction, and the Risk of Attempted Suicide Throughout the Life Span: Findings from the Adverse Childhood Experiences Study*, 286 JAMA 24, 3089 (Dec. 2001).

[6] Josie Spataro et al., *Impact of Child Sexual Abuse on Mental Health: Prospective Study in Males and Females*, 184 Br. J. Psychiatry 416 (2004).

[7] *See* Felitti, at 245–58; *see also* R. Anda, et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 EUR. ARACH PSYCHIATRY CLIN. NEUROSCIENCE 174, 175 (Nov. 2005) ("Numerous studies have established that childhood stressors such as abuse or witnessing domestic violence can lead to a variety of negative health outcomes and behaviors, such as substance abuse, suicide attempts, and depressive disorders"); M. Merricka., et al., *Unpacking the impact of adverse childhood experiences on adult mental health*, 69 CHILD ABUSE & NEGLECT 10 (July 2017); *see also* Sachs-Ericsson, et al., *A Review of Childhood Abuse, Health, and Pain-Related Problems: The Role of Psychiatric Disorders and Current Life Stress*, 10(2) J. TRAUMA & DISSOCIATION 170, 171 (2009) (adult survivors are thirty percent more likely to develop serious medical conditions such as cancer, diabetes, high blood pressure, stroke, and heart disease); T.L. Simpson, et al., *Concomitance between childhood sexual and physical abuse and substance use problems: A review*, 22 CLINICAL PSYCHOL. REV. 27 (2002) (adult survivors of CSA are nearly three times as likely to report substance abuse problems than their non-survivor peers).

[8] Beth E. Molnar et al., *Psychopathology, Childhood Sexual Abuse and other Childhood Adversities: Relative Links to Subsequent Suicidal Behaviour in the US*, 31 PSYCHOL. MED. 965 (2001).

[9] Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. PREV. MED. 430, 434 (2005).

[10] Delphine Collin-Vézina et al., *A Preliminary Mapping of Individual, Relational, and Social Factors that Impede Disclosure of Childhood Sexual Abuse*, 43 CHILD ABUSE NEGL. 123 (2015).

[11] Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019).

[12] Patrick J. O'Leary & James Barber, *Gender Differences in Silencing following Childhood Sexual Abuse,* 17 J. CHILD SEX. ABUSE 133 (2008).

[13] See David Finkelhor et al., Sexually Assaulted Children: National Estimates and Characteristics, US Dept. of Justice, Office of Justice Programs (2008), available at https://www.ojp.gov/pdffiles1/ojjdp/214383.pdf (Based on an analysis of an estimated 285,400 child sexual assault victims, researchers found that only 30% of cases involved police contact.); Kamala London et al., *Review of the Contemporary Literature on How Children Report Sexual Abuse to Others: Findings, Methodological Issues, and Implications for Forensic Interviewers*, 16 MEMORY 29, 31 (2008)

("Researchers have found a range of 5% to 13% of child sexual abuse victims reporting abuse to authorities across different studies.").

[14] Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. CHILD SEX. ABUSE 19, 30 (2007).

[15] 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 or over time as a victim recovers their memory. Hoskell, at 24.

[16] For an analysis of the SOL reform movement since 2002, *see* CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited Aug. 30, 2021), available at www.childusa.org/sol-report-2020.

[17] Michelle Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 CHILD ABUSE NEGL. 579 (1995).

[18] Elizabeth J. Letourneau et al., *The Economic Burden of Child Sexual Abuse in the United States*, 79 CHILD ABUSE NEGL. 413 (2018).

[19] *E.g.,* Netflix's *Jeffrey Epstein: Filthy Rich*; HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal.*

[20] *Revival Laws for Child Sex Abuse Since 2002*, CHILD USA (Jan. 1, 2022), https://childusa.org/wp-content/uploads/2020/05/WindowsRevival-Laws-for-CSA-Since-2002.pdf.

[21] *Mitchell v. Roberts*, 469 P.3d 901, 903-04 (Utah 2020).

[22] *Ashcroft v. Free Speech Coal*, 535 U.S. 234, 263 (2002) (O'Connor, J., concurring) ("The Court has long recognized that the Government has a compelling interest in protecting our Nation's children."). "There is also no doubt that[] '[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.'" *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017) (citing Ashcroft, 535 U.S. at 244); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982) (It is clear that a state's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling."); *New York v. Ferber*, 458 U.S. 747, 756-57 (1982) ("First. It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling.") (quoting *Globe Newspaper Co.*, 457 U.S. at 607).

[23] *State v. Alinas*, 171 P.3d 1046, 1049 (Utah 2007) (referencing "the State's particular and more compelling interest in prosecuting those who promote the sexual exploitation of children") (quoting *Ferber*, 458 U.S. at 761); *State v. Morrison*, 31 P.3d 547, 551 n.4 (Utah 2001); *State v. Jordan*, 665 O.2d 1280, 1287 (Utah 1983) ("the states are given great deference in regulating sexual depiction of children.") (declined to follow on other grounds, *Provo City Corp. v. Willden*, 768 P.2d 455, 456-58 (Utah 1989)).