

OFFICE OF POLICY AND LEGAL ANALYSIS
Bill Analysis

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 589 An Act To Provide Access to Justice for Victims of Child Sexual Abuse

Public Hearing Date: March 17, 2021

SUMMARY This bill does the following.

1. It exempts claims based upon a sexual act toward a minor from Maine Tort Claims Act provisions on required notice to a governmental entity and time limitations.
2. It revives for a period of 2 years, beginning 6 months after the effective date of this legislation, any civil claim or cause of action based upon a sexual act toward a minor that was barred because of the period of limitation or because of failure to timely file notice of claim.
3. It requires the clerk of the Superior Court in assigning cases based upon sexual acts toward minors for trial to give priority to any action revived pursuant to this legislation.
4. It requires the Chief Justice of the Supreme Judicial Court to provide training for justices and judges with respect to crimes involving a sexual act toward a minor and civil actions based upon a sexual act toward a minor.
5. It provides that, in an action based upon a sexual act toward a minor that was barred by operation of the statute of limitations prior to the effective date of this legislation and that is revived pursuant to this legislation, damages may be awarded against an entity that employed, supervised or had responsibility for the person who committed or allegedly committed the sexual act only if there is a finding of negligence on the part of the entity.

TESTIMONY

Proponents

- Representative Gramlich, sponsor (written testimony)
 - Senator Bailey, cosponsor (written testimony only)
 - Elizabeth Ward Saxl, Maine Coalition Against Sexual Assault
 - Michael Bigos, Maine Trial Lawyers Association (written testimony)
 - Hon. Cushman Anthony
 - Jan Collins, Maine Prisoner Advocacy Coalition(written testimony)
 - Megan Marquis (written testimony only)
 - Kate Dufour, Maine Municipal Association (written testimony only)
- Child sexual abuse is a significant but preventable adverse childhood experience and public health problem. Although estimates vary across studies, the data shows:
 - About 1 in 4 girls and 1 in 13 boys experience child sexual abuse at some point in childhood.
 - 91% of child sexual abuse is perpetrated by someone the child or child's family knows.

- The total lifetime economic burden of child sexual abuse in the United States in 2015 was estimated to be at least \$9.3 billion. However, this is likely an underestimate of the true impact of the problem since child sexual abuse is underreported.
- Experiencing child sexual abuse is an adverse childhood experience that can affect how a person thinks, acts and feels over a lifetime, resulting in short- and long-term physical and mental/emotional health consequences.
- Many children wait to report or never report child sexual abuse, even into adulthood.
- The reasons folks do not disclose vary; however, many survivors of sexual abuse often feel shame, fear, uncertainty, guilt and often avoid reliving the pain and emotional trauma that these events evoke.
- Many adults have yet to tell anyone that they were sexually abused as a child—not their partners, not their friends, not their family members, not even their therapists.
- Developmentally, children do not have the emotional and cognitive skills to process such traumatic adverse childhood experiences. Cognitive skills, including thinking, learning, understanding, problem-solving, reasoning and remembering, in addition to feelings of guilt and shame, will often prevent a child from disclosing.
- LD 589 is about justice.
- Now I know this bill is crafted to include language about tort claims and civil procedures. I will leave the details of those components of this bill to the committee, but let me be clear: The intent of my bill is to eliminate the statute of limitations for childhood sexual abuse survivors.
- The time frame in which survivors feel empowered to speak is variable.
- When we talk about disclosure, it is about being heard. It is about being believed. And it is about justice. And for many, it is about our journey through recovery.
- I know you will be hearing from folks who think eliminating the statute of limitations for survivors is a financial burden – that it will cost too much money if one enters into a suit against their perpetrator. For me, this bill is not about suing someone – again, it is about justice.
- LD 589 updates our laws surrounding child sexual abuse and strengthens the rights of these survivors.
- It removes the requirements of reporting the abuse claim to a government entity within a specific timeframe; establishes training for justices and judges about crimes and civil actions involving sexual acts towards minors.
- No one is safe if perpetrators of sexual abuse are unaccountable. All victims of sexual abuse should be able to hold their abusers accountable, especially when a governmental entity or governmental actor contributed to the injury.
- LD 589 would allow victims of sexual abuse to seek justice for claims barred by the MTCA statute of limitations if they come forward within a two-year window. That would be an incredibly helpful change for victims to come forward.
- This legislation is timely because child sexual abuse was not widely reported and known to be as prevalent when the current law and statute of limitations was enacted as it is today. The past two decades have brought to light both major abuses and abusers. The legislature didn't have the information we have now to draft a trauma-informed and policy-based law that it does based on examples of widespread abusers like the Catholic Church, Boy Scouts of America, or coaches.
- The average age of adults reporting sexual abuse as a child is 52 years old. Victims should not be prohibited from seeking justice when child sex abuse was going unchecked for years because society favored silencing victims and didn't understand the psychology behind the trauma of children repressing sexual abuse or fear of coming forward.
- There is a major power imbalance when a child is abused, and they are pressured to keep quiet by their abusers.

- Anyone who has worked with incarcerated men and women is aware of the almost universal history of trauma for these individuals. Unfortunately, there are very few studies being done that would allow us the statistics needed to quantify this trauma.
- The impact on the lives of people who have been victimized through physical and sexual abuse or false imprisonment does not end with cessation of their abuse. It is a wound they will carry with them throughout their lives.
- Much of the acting out that gets people into the criminal justice system stems from childhood sexual abuse
- The fact that this even needs to be an Act is concerning; every victim of child sexual abuse needs access to justice
- Municipal officials strongly support initiatives to protect children from all forms of abuse. It is not uncommon for law enforcement officers, librarians, general assistance administrators, and park and recreation directors to play a role in ensuring that children are afforded and receive necessary services.
- However, the members of our policy committee are concerned that the complete extinguishment of the time limit for filing a claim could carry unintended consequences.
- People move or die, memories fade and paperwork and other evidence may be misplaced, appropriately disposed of or destroyed by fire, flood or other natural disaster. Since the members of this committee have the background, expertise and experience necessary to properly evaluate the proposal, municipal leaders respectfully ask that you consider the role, if any, time limits have in the process of ensuring that justice is served.

Opponents

- Bruce Gerrity, American Property Casualty Insurers Association (APCIA) and the Roman Catholic Diocese of Portland (written testimony)
 - Cary Silverman, American Tort Reform Association (written testimony)
 - Charlie Soltan, Maine Association of Insurance Companies (MAIC) (written testimony only)
 - Stephen Gordon, Maine County Commissioners Association (written testimony only)
- APCIA and the Roman Catholic Diocese of Portland oppose LD 688 and LD 589 because those bills seek to revive actions that have been previously barred by applicable statutes of limitations. These bills allow civil actions for claims based upon sexual acts towards a minor even if the statute of limitations on such actions has already expired.
 - Maine courts already provide wide access for civil claims based on sexual acts towards minors.
 - Approximately twenty-two years ago, in 1999, 14 MRSA § 752-C was amended to abolish the statute of limitations for civil actions based on sexual acts towards minors from the effective date of the Act; this applied to all such claims that had not yet been barred by the statute of limitations in force on the effective date of this Act.
 - As of 1999 when the statute of limitations based on sexual acts towards minors was abolished, the applicable statute of limitations for such claims was 12 years from the time the cause of action had accrued. The statute of limitations also had a provision that applied to discovery of a sexual act or contact in childhood that had previously been unknown or repressed to the individual and was not discovered until later in life, often through a therapeutic process; as of 1999, the statute of limitations based on discovery was 6 years from the time discovery was made, or reasonably could have been made.
 - Accordingly, as of today, the existing statute of limitations for actions based upon sexual acts towards minors is essentially 34 years. The discovery rule remains in place so that a discovery of a child sexual act or contact that occurred on any date, that could not reasonably have been discovered sooner, is in place.

- Accordingly, Maine courts are already very accessible to individuals with actions based upon sexual acts towards minors going back many, many years.
- Statutes of limitation exist for reasons of fundamental fairness. The reason civil procedure exists is to allow the parties to obtain underlying evidence of the claim before presenting their case to a factfinder. This cannot be done when claims are old and have been barred by the SOL.
- This is not the first time the Judiciary Committee has considered this issue. In 2012, the Committee considered LD 1825, An Act to Change the Statute of Limitations on Prosecution for Crimes of Sexual Abuse and for Civil Actions for Sexual Abuse When the Actor is in a Position of Authority. It was amended to be limited to crimes of prosecution of psychiatrists, psychologists and social workers. The bill failed on the floor.
- There are important issues of fundamental fairness of a legal system in not reawakening claims previously barred by the statute of limitations. Regardless of the nature of the claim, any participant in litigation is entitled to be able to evaluate a claim and address it meritoriously.
- Defendants and courts must be protected from having to deal with cases that are so aged that no response is possible, be it as a result of loss of evidence, death, the passage of time and natural erosion of memory or lack of documentation.
- If LD 688 and 589 were to pass, potential claims filed in Maine courts will not just involve an alleged perpetrator of child sexual assault but will implicate untoward numbers of organizations, camps, schools, municipalities, counties, and health care providers such as physicians, nurses, psychiatrists, psychologists and social workers.
- There is also the potential for both employees and volunteers of such organizations and businesses to be personally sued or at least brought into the litigation process as potential witnesses. This includes teachers and principals, coaches, camp counselors, Sunday school teachers, and classroom chaperones, just to name a few – the number of people who will be dragged into the litigation process for very old claims is endless.
- Many or perhaps even most of these individuals and organizations may have had no reasonable basis to know of any child sexual abuse that occurred a long time ago.
- Punishing an innocent defendant with civil liability is no less unjust than denying compensation to a deserving victim.
- No one is immune from suit, ill-founded though the claims may be. Even the most confident or the most righteous defendant may find litigating an unfounded claim distracting, time-consuming and expensive; and for the ordinary individual, the financial and emotional burden of potential litigation cannot be underestimated. In addition, our system of justice is sufficiently imperfect that even the innocent sometimes have reason to fear an adverse outcome.
- The duty to defend is broader than the duty to indemnify so even if many potential claims based upon allegations involving childhood sexual assault turn out to be unfounded and ultimately dismissed, significant resources will need to be expended to defend these claims to reach a dismissal.
- Under an insurance company's broad duty to defend, if a complaint reveals even just a "potential... that the facts ultimately proved may come within the coverage, a duty to defend exists."
- The costs of defending such claims will be significant.
- The courts are already under tremendous pressure from the backlog of cases resulting from the court access restrictions in place as a result of the pandemic. Reviving cases currently barred by the statute of limitations will create even more pressure on the burdened court system.
- Members of a society have a "vested interest" in the statute of limitations once the prescribed time has completely run and barred the action.

- In the workers compensation setting the Law Court held “amendments to the statute of limitations may be applied retroactively to extend the statute of limitations, but not to revive cases in which the statute of limitations has expired” because the expiration of the statute of limitations “results in a final disposition of the case.”
- Sexual abuse against a child is intolerable and should be punished through both criminal prosecution and civil claims.
- I respect the advocacy and good intentions of the proponents for this legislation, and the courage of survivors of abuse who may testify today.
- We need to focus on general principles underlying statutes of limitations and why reviving time- barred claims is often viewed as unsound policy by legislatures and unconstitutional by courts.
- American Tort Reform Association has no issue with providing a lengthy period of time to bring a lawsuit alleging injuries from childhood sexual abuse. For any type of civil action, however, statutes of limitation should be finite and changes should apply prospectively and not revive claims after the time to file them has ended.
- As you may know, Maine has lengthened its statute of limitations for civil actions seeking damages for injuries resulting from childhood sexual abuse four times since 1985, eventually eliminating the statute of limitations entirely in 2000. In each of these instances, the legislature did so prospectively, which is a sound, constitutional approach.
- The legislation before you today would apply the 2000 law retroactively, allowing claims going back several decades to be filed not only against perpetrators, but also negligence claims against nonprofit organizations, businesses, schools, camps, or other private organizations or public entities based on what those present at the time knew or did not know, or should or should not have done when hiring, supervising, and monitoring employees and volunteers.
- Statutes of limitations protect the integrity of decision-making in the civil justice system
- The core reason we have statutes of limitations – which can be overlooked – is to allow judges and juries to make decisions about liability based on the best evidence available. Statutes of limitations protect accuracy and reliability in the civil justice system.
- Reviving time-barred claims sets a troubling precedent
- It is understandable to view childhood sexual abuse as involving such horrific conduct that there should be an exception to the rules we apply to other types of lawsuits. But tort law often addresses catastrophic life-long injuries. Cases can involve whether a medication caused a child’s birth defect, a defect in a car caused an auto accident that killed a family, or whether people developed cancer due to exposure to a consumer product, for example.
- If Maine revives time-barred claims here, you can expect others to seek similar treatment.
- Reviving time-barred claims not only sets a troubling precedent, it is also likely to be found unconstitutional. Maine’s constitutional law is consistent with most other states that recognize that a legislature cannot eliminate vested rights, which includes reviving time-barred claims.
- The Supreme Judicial Court has specifically said in at least seven decisions between 1980 and 2014 that what the legislature can do is extend a statute of limitations to increase the time to file suits where the statute of limitations has not already expired. What the legislation cannot do is revive time-barred claims:

“Legislation which lengthens the limitations period on existing viable claims does not have the effect of changing the legal significance of prior events or acts. It does not revive an extinguished right or deprive anyone of vested rights. No one has a vested right in the running of a statute of limitations until the prescribed time has completely run and barred the action.”

- Given the Supreme Judicial Court’s clear instructions, if enacted, the legislation before you is likely to be invalidated, which would only to provide false hope to the survivors who file these lawsuits.
- Two thirds of states have not taken the extreme approach of reviving time-barred claims
- Despite significant and understandable political pressure, state legislatures have repeatedly rejected proposals to revive time-barred claims given the importance of statutes of limitations to assessing liability, protecting due process, and maintaining a stable and predictable civil justice system. Instead, most states have adopted a finite, but longer, statute of limitations for child sexual abuse claims than other claims and applied the longer period to future claims.
- Maine is one of a handful of states that have eliminated the statute of limitations for these claims entirely, but prospectively.
- Just one-third of states have revived time-barred civil claims alleging injuries from childhood sexual abuse. It is important to recognize, however, that many of these laws place significant constraints on the types of claims that are revived.
 - Rhode Island passed legislation in 2019 extending the statute of limitations for childhood sexual abuse cases from 7 years to 35 years of turning 18 (age 53), and providing a 7-year period to bring a claim from when a victim discovers or reasonably should have discovered the injury caused by the abuse. Before enacting this law, the General Assembly removed a 3-year window that would have permitted time-barred claims. Instead, the enacted legislation applies the extended period retroactively for claims brought against perpetrators only and explicitly does not revive time-barred claims against entities.
 - Massachusetts extended its statute of limitations from 3 years of becoming an adult (the general period for personal injury claims) to 35 years of age 18 (age 53) or 7 years of discovery of the injury in 2014. The new period applied prospectively to negligence claims against organizations and retroactively to revive time-barred claims against perpetrators only. Massachusetts also has a low cap on damages in civil claims against charitable organizations, which is not found in Maine law.
 - Vermont eliminated its statute of limitations and indefinitely revived time-barred claims in 2019, but, unlike the legislation before you, that law requires a showing of gross negligence for revived claims against organizations. Laws enacted in Delaware and Hawaii also required a showing of gross negligence in a revived claim.
- Maine legislation includes none of these types of constraints and would indefinitely revive negligence claims against organizations involving what they should have known or what steps they should have taken several decades ago.
- In sum, legislation that revives time-barred claims sets a troubling precedent, allowing decades-old claims where witnesses, records, and other evidence upon which judges and juries can evaluate liability are no longer available.
- Insurance is a product that seeks to protect individuals and business, whether private or public, from the financial risks caused by the actions of themselves or others.
- Insurance is offered and priced based on a set of actuarial calculations that seek to take in the probability of expected risk within a limited period for those risks to materialize.
- Insurance is also based on the collective risk that all insureds share. Thus, for example, the cost of insuring our individual cars, homes or businesses costs far less than the value of our homes, cars or businesses that we insure or the liability protection we secure. Risks that are unknown, and/or uninsurable, do not factor in the costs for insurance, thereby keeping it affordable.
- Statutes of limitation have been enforced throughout history, from both Greek and Roman periods and remains a fundamental part of American law.

- Statutes of limitations encourage actions to be brought while evidence and witnesses are available and memory is accurate.
- A long dormant matter litigated, whether civil or criminal, without such fresh or available evidence and witnesses results in more injustice than justice.
- In the insurance context, having a risk that is of unlimited duration is nearly impossible to quantify, and thus, price. LD 688 proposes such an unlimited risk by eliminating the statute of limitations for childhood sexual abuse.
- In practical effect, as does LD 589, each propose to “revive” claims that have been extinguished by the operation of the statute of limitations.
- From a practical standpoint under current Maine law, sexual assault against a minor allegations potentially expose an organization to negligent supervision claims. That is, victims typically claim they would not have been injured by a perpetrator if the organization had properly supervised the situation. And while any organization may scrutinize its current employees and managers for red flags, these bills give rise to liability for people that may have not worked for or managed an organization for decades.
- Our entire system of jurisprudence is built on the balancing of the interests of parties to a dispute, whether the state against a defendant, or a plaintiff versus a defendant. It is not an accident that Justice holds a balanced scale.
- To now have insurance policies respond to suits for these risks, as our duty to defend is broader than our duty to indemnify, decades after the statute of limitations have run, is contrary to the principles supporting the accessibility, affordability and breadth of insurance that gives some financial protection to those that seek such coverages.
- If these bills pass, it will certainly create higher priced business owners policies (BOP), Director & Officer policies (D&O) and EPLI policies (Employment Practices Liability Insurance). These will impact all businesses that purchase and need these policies, not just those that may have a more supervisory role over more well-known perpetrators.
- Moreover, these revivals of claims will lead to complex, lengthy and costly litigation, at a time when our courts are backed up due to the pandemic.
- We fully empathize with the victims of childhood sexual assault and condemn such actions to the fullest extent. We believe it is entirely appropriate to pursue criminal convictions.
- However, using the civil courts and justice system to litigate long dormant issues raises detrimental consequences for those far beyond those involved in such heinous actions.
- We therefor ask you to not include the provisions we have objected to.
- Our Association and its members strongly agree that child sexual abuse is abhorrent and civil actions related to such behavior are deserving of longer statutes of limitation than other behaviors. In this regard, we agree with the premise behind current Maine law which provides a lengthy statute of limitations period for actions related to child sexual abuse, as well as a discovery rule.
- We also understand that having a statute of limitations for civil actions is a basic premise of justice for a variety of reasons. In our system of justice, we rely on proof and evidence in order to find an individual liable, and in a court, such evidence can come from individual witness testimony, documentary evidence, or evidence to establish the identity or whereabouts of individuals. Over time, such evidence can become stale or disappear as individuals get older and forget important details, witnesses pass away, the condition of evidence deteriorates, or evidence simply disappears or becomes lost; in addition, laws and definitions may change.
- In this regard, as more time passes, the ability to conduct a fair trial declines. In the case of child sexual abuse, the extended statute of limitations period currently in place pushes the outer limits of time during which a fair trial can take place.
- Having trials beyond this time frame may undermine our system’s ability to ensure that such trials are fair.

- Potential liability related to child sexual abuse may involve individuals alleged to be direct perpetrators. Liability may also extend to employment supervisors, mental health professionals, or employers themselves who may be alleged to have responsibility for allowing child sexual abuse to occur, or for failing to identify and stop such events from occurring.
- Against this backdrop, Maine counties are self-insured through a Risk Pool that covers counties and county employees in the event of liability or claims of liability. The Risk Pool reserves against potential losses and payments through the premiums it collects from counties, which are included as part of the taxes that county taxpayers pay. In this regard, passage of these two bills, to the extent they further extend or remove the times limits associated with civil actions, would create financial exposure to the Risk Pool that would ultimately be paid for by county taxpayers.
- Ultimately, we do not and would not ask the Judiciary Committee or the Maine Legislature as a whole to make a decision on these bills by weighing the risk of harm to children against the likelihood of higher county taxes. If that were the sole issue, we would not suggest any action other than passage of these two bills.
- However, the calculation must also consider the third parties involved in civil actions related to child sexual abuse, including mental health professionals and supervisors who may become embroiled in civil litigation because they are still alive after many decades, even if the potential for liability for such individuals may be small or non-existent. In such cases where the individuals are covered by the county Risk Pool, Maine counties and county taxpayers become responsible for paying legal costs for defending very old claims, regardless of the likelihood of actual liability.
- Likewise, county taxpayers become responsible for settling claims to avoid costly litigation, even if there is no liability.
- For these reasons, we believe current law provides the most appropriate balance between protecting children, ensuring fair trials, and limiting the risk of tenuous and costly litigation against third parties that may be underwritten by Maine taxpayers.

Neither for nor against

- Julie Finn, Judicial Branch (written testimony)
 - The issues raised in the LD fall squarely within the policy-making realm of the Legislature.
 - However, we do have some concerns about the provisions requiring priority scheduling and judicial training.
 - Recognizing that cases involving harm to children are of the utmost importance, our courts hear many such cases, including many matters centering on children and families, such as child protection cases, cases involving the determination of parental rights and responsibilities, etc.
 - The courts also hear cases requesting mental health commitments, protection from abuse orders, juvenile management and treatment, and intervention in many other critical situations that are extremely important to those involved. Our courts are accustomed to prioritizing important matters and it should be left to the courts to continue to do so.
 - Similarly, the Judicial Branch takes training its judges, justices, and clerk's office staff very seriously.
 - During our three administrative weeks per year, educational sessions are conducted, often with outside experts. If the proponents of this LD have suggestions about sources of critical information, we would welcome the opportunity to fit this topic into our schedule.
 - Keeping current on legal and societal issues is very important and something we work hard to accomplish.

BACKGROUND

In 1985, the Legislature enacted 14 MRSA §752-C which provided that actions based upon sexual intercourse or a sexual act, as defined in the Criminal Code, with a person under the age of majority must be commenced within 6 years after the cause of action accrues, AND amended 14 MRSA §853 to make clear that a statute of limitation does not start running until the person reaches the age of majority.

In 1989, the Legislature added a discovery rule: a claim must be filed within 3 years of the time the person discovers or reasonably should have discovered the harm, whichever occurs later.

In 1991, the Legislature extended the statute of limitations to 12 years after the cause of action accrues or within 6 years of discovery, whichever is later. PL 1991, c. 551 included an application section:

This Act applies to the following actions based upon sexual intercourse or a sexual act with a person under the age of majority:

1. All actions based upon sexual intercourse or a sexual act occurring after the effective date of this Act; and
 2. All actions for which the claim has not yet been barred by the previous statute of limitations in force on the effective date of this Act.
- (The effective date was October 9, 1991.)

In 2000, the Legislature repealed and replaced §752-C to provide its current language: "Actions based upon sexual acts toward minors may be commenced at any time." It also cross-referenced the definitions of "sexual act" and "sexual contact" in the Criminal Code. And it included an application section:

This Act applies to the following actions based upon a sexual act or sexual contact with a person under the age of majority:

1. All actions based upon a sexual act or sexual contact occurring on or after the effective date of this Act; and
 2. All actions for which the claim has not yet been barred by the previous statute of limitations in force on the effective date of this Act.
- (The effective date was August 11, 2000.)

DISCUSSION

- The bill proposes to amend the Maine Tort Claims Act with regard to civil claims for damages against governmental employees or governmental entities based on sexual acts toward minors. The two changes are to basically waive the existing 2-year statute of limitations (Section 2), and to waive the require notice of claim that otherwise must be given to the governmental entity or employee (Section 1).
- This bill creates a "window" during which claims that are time-barred by the existing statute of limitations can be filed in court. (Section 3)
- It requires the Superior Court to give priority to any action based upon a sexual act toward a minor that is filed in the "window" of Section 3. Note that the Legislature's Joint Rule 318 requires the Judiciary Committee to review any legislation that contains a provision to expedite, establish or adjust the priority of judicial proceedings. There is an established procedure for the committee to review proposals.
- It requires the Chief Justice to ensure judges and justices receive appropriate training with regard to crimes involving a sexual act toward a minor and civil actions based upon a sexual act toward a minor. Judicial training is traditionally a subject matter fully within the exclusive jurisdiction of the Judicial Branch.

INFORMATION REQUESTED

The legal status of statutes that revive claims that have been time-barred.

- Chief Deputy Attorney General Chris Taub has been invited to the work session to share information.
- Has Vermont's law been challenged? No, no case has been filed challenging the constitutionality of the Vermont law that was enacted in 2019. The new language provides:
 - (d) Notwithstanding 1 V.S.A. § 214, this section shall apply retroactively to childhood sexual abuse that occurred prior to July 1, 2019, irrespective of any statute of limitations in effect at the time the abuse occurred. In an action based on childhood sexual abuse that would have been barred by any statute of limitations in effect on June 30, 2019, damages may be awarded against an entity that employed, supervised, or had responsibility for the person allegedly committing the sexual abuse only if there is a finding of gross negligence on the part of the entity. (12 V.S.A. § 522)
- Additional information compiled by Darlene Shores Lynch< OPLA Senior Researcher:

Several state courts, Massachusetts, Connecticut and New York, have found state retroactive revival windows for expired civil statute of limitations for child sexual abuse to be constitutional. However, the Utah Supreme Court ruled in 2020 that Utah's statute of limitations law was unconstitutional. Below is a summary of and link to each court case and related state statute.

- **Massachusetts**

[Sliney vs. Previte, 473 Mass. 283 \(2015\)](#)

In 2012, the Plaintiff filed an action alleging that the Defendant had sexually abused her between 1968 and 1977, when she was a child. Until June 2014, civil actions alleging sexual abuse of a minor were governed by a three-year statute of limitations. [Mass. Gen. Laws chapter 260 §4C](#) was amended, effective June 2014, to extend the limitations period to thirty-five years. The superior court dismissed the complaint on statute of limitations grounds. The Supreme Judicial Court vacated the judgment of the superior court, holding (1) under the circumstances of this case, section 4C's extended statute of limitations applies to the Plaintiff's case; and (2) the retroactive application is constitutional as applied to the Defendant.

- **Connecticut**

[Doe v. Hartford Roman Catholic Diocesan Corp. 119 A.3d 462 \(2015\), 317 Conn. 357](#)

After a jury trial, the Defendant, the Hartford Roman Catholic Diocesan Corporation, was found guilty of negligently and recklessly assigning Father Ivan Ferguson to serve as the director of Saint Marty's Elementary School, where he sexually abused the Plaintiff from 1981 through 1983. The defendant appealed the decision. The Supreme Court affirmed the trial court's decision, holding (1) there was sufficient evidence to support the jury's verdict; (2) the trial court did not commit prejudicial error in its evidentiary rulings; (3) the trial court properly granted the Plaintiff's motion to strike the Defendant's laches defense; and (4) the retroactive application of certain amendments to the [applicable statute of limitations](#) to revive the Plaintiff's otherwise time barred claims did not violate the Defendant's substantive due process rights under the Connecticut Constitution.

- **New York**

[ARK3 Doe v. Diocese of Rockville Centre, et. al., \(May, 2020\)](#)

Defendants, including the Diocese of Rockville Centre, moved to dismiss 44 complaints against them brought pursuant to the lookback provisions of the [New York Child Victims Act](#) (CVA) alleging that the claims were time-barred because they violated the Due Process Clause of the New York State Constitution. The CVA's one-year look back window, which began in August 2019, has recently been extended to January 2021 due to the coronavirus pandemic. The lookback window explicitly allows any child sex abuse victims to file previously time-barred claims.

The New York Nassau County Supreme Court issued its opinion in May of 2020. The Court found that the Child Victims Act is a "reasonable response to remedy the injustice of past child sexual abuse and the court only needs to determine that the legislation was a reasonable measure to address an injustice in order to

find that it satisfies the due process clause.” The Court said the Diocese of Rockville Centre's argument that the Court should ignore the Child Victims Act's sweeping statute of limitations was not persuasive, adding that it would lead to unreasonable results given the intention of the state Legislature. As such, the CVA does not violate the Defendants' Due Process rights secured by the New York State Constitution.

Defendants also argued that all claims against them should be dismissed for failure to state a claim upon which relief can be granted. The Court denied the remainder of the Defendants' motion in its entirety, holding that “[CPLR 214-g](#) expressly revived every ‘claim or cause of action brought against any party’ that alleges ‘intentional or negligent acts or omissions’ stemming from child sexual abuse offenses.” Defendants filed a Notice of Appeal in September, 2020 with the New York Supreme Court, Appellate Division, Second Department.

- **Utah**

[Mitchell v. Roberts, 2020 UT 34, 469 P.3d 901](#)

Terry Mitchell, age 16, was sexually assaulted in 1981 by prosecuting attorney Richard Roberts. Thirty-six years later, Mitchell sued Roberts in federal court.

Roberts moved to dismiss Mitchell's case as barred by the statute of limitations. Mitchell responded that the Utah legislature amended the [statute](#) to revive her time-barred claims. Under the amended statute, otherwise-barred claims may be brought within the later of 35 years from the victim's 18th birthday or three years after the amendment's effective date. Unsure of Utah's approach to the retroactive revival of barred claims, the district court certified the question to the Utah Supreme Court.

In reaching an answer, the Supreme Court analyzed the due process limitations on legislative power to retroactively revive an untimely claim. The Court considered prior Utah cases, the original understanding of state constitutional due process, and the limits on legislative policy judgments. The Court noted that Utah courts have held for over a century that the legislature may not enact laws retroactively negating a defendant's vested rights. That issue first arose when the legislature enacted a statute effectively overriding a judicial decision that children of a polygamous marriage may not inherit. The court invalidated the statute as violating the constitutional separation-of-powers because the legislature was wrongly attempting to retroactively take away a party's vested rights and then attempting to make a court enforce it.

The Court applied a vested-rights analysis in the Mitchell case. The Court found that a vested-rights limitation was firmly grounded in the original understanding of the Utah constitution. In the late 19th century, “due process” was understood as prohibiting legislatures from acting as courts. Since a legislature may not retroactively negate vested rights, reviver statutes amounted to “judicial decrees in disguise.” Delegates ratifying the constitution viewed the tampering with vested rights as beyond the legislature's power and as a violation of state constitutional due process. Therefore, the Court held that a vested right in a limitations defense was protected by the constitution itself.

Below are links to additional information related to state laws with retroactive revival windows for expired civil statute of limitations for child sexual abuse claims:

- [History of U.S. Child Sex Abuse Statutes of Limitation Reform: 2002 to 2020, February 26, 2021, Child USA](#)
- [Child USA' Memorandum of Law in Support of Motion to File Amicus Curiae Brief in Support of Plaintiff, September 28, 2020 \(KAJA SOKOLA v. HARVEY WEINSTEIN, et al.\)](#)
- [Discovery Rule Report: Discovery Tolling of Statutes of Limitation for Child Sexual Abuse Claims, February 26, 2021 from Child USA](#)
- Other states' laws with recent changes on civil statute of limitations for sexual abuse victims:
 - California - [Cal. Civ. Proc. Code § 340.16](#)
 - District of Columbia - [D.C. Code Ann. § 12-301](#)

- Illinois - [ILL. Comp. Stat. 735 § 5/13-202.2](#)
- Michigan - [Mich. Comp. Laws § 600.5805](#)
- Montana - [Mont. Code Ann. § 27-2-216](#)
- New Jersey:
 - [N.J. Stat. Ann. § 2A:14-2a](#)
 - [N.J. Stat. Ann. § 2A:14-2b](#)
 - [N.J. Stat. Ann. § 2A:30B-6](#)
 - [N.J. Stat. Ann. § 2A:53A-7.5](#)
 - [N.J. Stat. Ann. § 2A:61B-1](#)
 - [N.J. Stat. Ann. § 59:2-1.3](#)
- New Mexico
 - [N.M. Stat. Ann. 1978, §37-1-30](#)
- Texas - [Tex. Civ. Prac. & Rem. §16.0045](#)
- Vermont - [Vt. Stat. Ann. tit. 12 §522](#)

FISCAL IMPACT:

Not yet determined