



# Wilbanks Child Endangerment and Sexual Exploitation Clinic

*School of Law*

**UNIVERSITY OF GEORGIA**

# Civil Statutes of Limitation for Child Sexual Abuse and Domestic Minor Sex Trafficking

## A National Survey and Suggestions for Reforms in the State of Georgia

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The Wilbanks Child Endangerment and Sexual Exploitation (CEASE) Clinic is the first of its kind in the nation, representing survivors of child sexual abuse in juvenile court dependency matters and civil litigation. The clinic not only provides direct representation to survivors, but also serves as a teaching center as part of the University of Georgia School of Law. For more information about the Wilbanks Child Endangerment and Sexual Exploitation Clinic, please visit our website at <http://cease.law.uga.edu/>. **As a unit of the University of Georgia, the CEASE Clinic does not engage in lobbying activities and does not endorse any specific legislation.**

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# EXECUTIVE SUMMARY

Childhood sexual abuse is a public health crisis affecting children, families, and communities across the globe. An estimated 10% to 27% of children will be sexually abused prior to their 18th birthday. This number may be an underestimate as only one-third of children disclose the abuse. Perpetrators are known by the child and their family in 89% of cases, with approximately two-thirds of perpetrators being non-family members, such as church clergy, teachers, or other youth activity leaders. Arrest and conviction of perpetrators of childhood sexual abuse is rare, with only 26% of all sexual assaults resulting in arrest. False claims are also rare, constituting an estimated 4% to 8% of all claims, most of which are seen in the context of child custody disputes. Survivors of childhood sexual abuse disclose the abuse, on average, around age 52. The costs of childhood sexual abuse are high and average lifetime costs to a survivor are estimated at \$210,012.

Since 2002, most states have reformed their civil statutes of limitation for childhood sexual abuse claims. Reforms vary, from total elimination of the statute of limitations to raising the age by which a survivor may sue by a few years. While Georgia added a 2-year delayed discovery provision for survivors of abuse occurring after July 1, 2015, as well as a limited 2-year retroactive window allowing for claims against perpetrators only, the law has otherwise remained unchanged in the state. ChildUSA, a national think tank for child protection, ranked Georgia as one of the worst states for SOL revival windows, as well as one of the worst states for survivors of child sexual abuse seeking access to the civil justice system. Georgia is one of only 6 states that do not allow claims after the age of 30 and have a delayed discovery provision of at least 4 years.

## CHILDHOOD SEXUAL ABUSE

### A LOOK AT THE NUMBERS

#### 10% - 27% CHILDREN

Will be sexually abused before reaching the age of eighteen.



#### AGE 52.2



Average age of disclosure.  
Only 1/3 of children ever disclose the abuse.

#### 89% AND 26% PERPETRATORS

89% of perpetrators are known to the child.  
26% of all perpetrators of sexual assault are ever arrested.

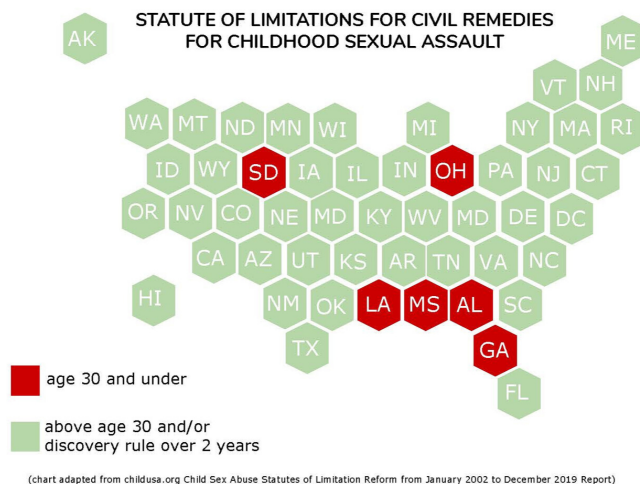


#### THE COST \$210,012



Average lifetime cost per victim of child abuse.

#### 4% - 8% Of claims of childhood sexual abuse are false.



Georgia falls below the national standard for statutes of limitation (SOL) for civil child sexual abuse claims. Nine states have recognized the significance of child sexual assault and have eradicated SOLs for civil child sexual abuse claims completely. Out of the forty states with age limits on SOLs (not including delayed discovery provisions), only 9 have SOLs at or below age 23, while 31 have SOLs above age 23. Of those with SOLs above age 23, twelve states have SOLs between ages 23 to 30, while 19 states have SOLs above age 30. In comparison to national trends, Georgia's statute of limitations falls behind in protecting survivors.

## Domestic Minor Sex Trafficking

Forty of 50 states allow survivors of trafficking to seek civil remedies against their trafficker. Several states also allow the survivor to bring a claim against anyone who knew or should have known that their business was profiting at the expense of survivor. Under current Georgia law, survivors of domestic minor sex trafficking (DMST) have limited access to civil remedies. Child survivors of "trafficking a person for sexual servitude" may only seek civil claims if the trafficking occurred on or after July 1, 2015. Georgia does not have a state civil remedy for survivors of DMST occurring prior to July 1, 2015, and lacks any civil remedy for adult survivors. Absent a specific civil remedy, survivors must seek claims under Georgia's 2-year personal injury statute of limitations or under federal law.

In 2018, the National Human Trafficking Hotline (NHTH) received 375 reports of human trafficking in Georgia with an estimated 1,628 victims. NHTH statistics indicate that approximately 30% of victims of trafficking in Georgia are children. According to the American Society for the Positive Care of Children, the average age of child victims of sex trafficking is 13 years old. Multiple studies show that between 70% and 90% of victims of sex trafficking were sexually abused as children. The sexual abuse they experienced as children increased their vulnerability to trafficking. Deterring child sexual abuse may help decrease the number of victims of trafficking.



# Retroactive Open Windows

In 2015, Georgia became one of eighteen states to revive expired civil SOLs for childhood sexual abuse claims. Of those eighteen states, 13 allowed survivors to sue entities or private organizations. A limited number have allowed claims against public entities, as well. Georgia was one of only 5 states that protected entities, both public and private, from civil liability under its open window provision. Georgia's decision to exclude entity liability was grounded in a number of concerns, including whether a retroactive civil statute of limitations was constitutional, whether allowing "stale claims" was unfair to defendants, whether an open window that included entity liability would cause a flood of litigation, and whether entities would be forced to close their doors as a result of defending claims.

## NEW YORK

CHILD VICTIMS ACT

### BEFORE AND AFTER

EFFECT OF THE ONE-YEAR OPEN WINDOW

2018	2019
Civil claims for child sexual abuse must be filed prior to 23rd birthday	Civil Claims for child sexual abuse must be filed prior to 55th birthday, or within the one-year open window from August 14, 2019 to August 13, 2020
1,341,290 total civil cases filed across the state in one year	385 civil cases filed the first day the open window was open; 1,300 estimated in total
176,151 new civil cases filed seeking over \$25,000 in damages	0.097% increase estimated in total state case filings due to the open window
11.5% of civil cases in the New York Supreme Court (equivalent of Superior Court in GA) were "other tort claims"	0.74% increase in all civil case filings in New York's Supreme Court due to the open window

Retroactive civil statutes of limitation have long been found by both the United States and Georgia Supreme Courts to be constitutional. While a retroactive window would cause defendants to answer to older claims, the survivor-plaintiff bears the ultimate burden of proof. Furthermore, the survivor was a child at the time of the abuse and is less likely to have had control over any evidence, thereby making that burden even more difficult to overcome. Little information or data currently exists indicating that entities, small or large, would have to close their doors and programs as a result of claims of childhood sexual abuse. Rather, in states where retroactive windows have included entity liability, organizations hardest hit by claims, such as the Catholic Church, are still in operation. A small number of organizations, such as the Boy Scouts of America, have filed for Chapter 11 bankruptcy. Chapter 11 filings typically help organizations to reorganize debts and stay in business, rather than close operations.

Finally, although headlines proclaimed that New York's Child Victims Act resulted in a floodgate of litigation, claims filed under the open window increased total state civil filings by an estimated 0.097% and Supreme Court (equivalent of Georgia's Superior Courts) civil filings by only 0.74%.

# Key Findings and Recommendations

## **Increasing the age by which a survivor may sue is supported by evidence-based research.**

- On average, a survivor of childhood sexual abuse will not disclose the abuse until age **52**.
- One clinical study found that 64% of participant-survivors “experienced some varying degree of dissociative amnesia” and that 28% suffered “severe memory deficits.”
- Another study found that approximately 33% of survivors of child sexual abuse have reported or show signs of complete amnesia of the abuse at some point during their lives.

## **Access to remedies through civil lawsuits has therapeutic implications for survivors, with few negative effects on entities.**

- In one study, 82% of survivors interviewed sought public affirmation of the wrongs committed against them, 38% wanted apologies, 41% hoped to deter the perpetrator from harming others, 41% sought monetary damages for harms incurred, and 72% hoped to gain access to “the justice that they felt they had been denied.”
- The same study reported that on average civil litigants received **\$209,833** in damages, while survivors receiving awards from victims compensation funds received awards ranging from \$5,000 to \$60,000. **The average lifetime cost per survivor of child abuse is approximately \$210,012.**
- One survivor of the study reported, “My experience was worth more than the money awarded,” while another stated, “The adjudicator heard me, believed me. It gave me something I thought I would never have. It gave me ‘Someone believed me.’”
- Little to no data or information exists indicating that organizations defending against childhood sexual abuse claims will close their doors or programs.

## **Georgia's civil statute of limitations for childhood sexual abuse is one of the worst in nation for survivors and can be improved.**

- ChildUSA, a national think tank for child protection, ranked Georgia as one of the worst states for SOL revival windows, as well as one of the worst states for survivors of child sexual abuse seeking access to the civil justice system.
- Georgia is one of only 6 states that do not allow claims after the age of 30 and have a delayed discovery provision of at least 4 years.
- National trends show that most states have increased the age by which a survivor can sue, have expanded delayed discovery provisions, and have opened retroactive windows that include entity liability.

## **1. Introduction**

The Wilbanks Child Endangerment and Sexual Exploitation (CEASE) Clinic is a teaching and research clinic at the University of Georgia School of Law. The clinic represents survivors of childhood sexual abuse and exploitation in civil and juvenile dependency proceedings. Since opening its doors in 2016, CEASE has assisted over 100 survivors in the state of Georgia through legal representation, legal advice, and/or referrals. Law and masters of social work students work in the clinic and participate in a seminar covering best practices in representing survivors, relevant laws and policies, and practical legal and social work skills. Law students represent survivors under attorney supervision and engage in policy research on issues affecting survivors.

**As a unit of the University of Georgia, the CEASE Clinic does not engage in lobbying activities and does not endorse any specific legislation.** This report is a summary of research on child sexual abuse, how Georgia compares to other states and national trends in providing civil remedies to survivors, common concerns with allowing retroactive claims, and the impact of civil lawsuits on survivors and entities.

## **2. Child Sexual Abuse**

### **a. Scope of the Issue**

Child sexual abuse affects individuals, families, and communities across all socioeconomic groups and geographic areas. The number of children who will be sexually



abused is unknown, but various studies estimate that anywhere from 10% to 27% of children will be abused before the age of 18.<sup>1</sup> Child sexual abuse is commonly defined as:

The involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials.<sup>2</sup>

An estimated 89% of children who are abused know the perpetrator.<sup>3</sup> Thirty percent of children are abused by family members while family members make up 26% of perpetrators.<sup>4</sup> Therefore, the majority of perpetrators are non-family members who are known and trusted by the child and their family, such as church clergy and youth organization leaders.

An estimated 26% of sexual assaults result in arrest, with assaults on juvenile victims more likely to lead to arrest than in cases where the victim is an adult.<sup>5</sup> “An offender was arrested in just 19% of the sexual assaults of children under age 6, compared to 33% of victims ages 6 through 11, and 32% of victims ages 12 through 17.”<sup>6</sup> Across multiple studies, victims of child sexual abuse were found less likely to disclose the abuse during childhood, with approximately one-third disclosing during childhood and two-thirds first disclosing during

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<sup>1</sup> Murray, Laura K. et al., *Child Sexual Abuse*, 23 Child Adolesc Psychiatric Clin N. Am. 321–337 (2014).

<sup>2</sup> World Health Organization, *Report of the Consultation on Child Abuse Prevention* (1999), available at <https://apps.who.int/iris/handle/10665/65900>.

<sup>3</sup> David Finkelhor & Anna Shattuck, *Characteristics of Crimes against Juveniles*, Juv. Just. Bull., June 2000, at 1-12.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> Howard N. Snyder, Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* 11 (2000).

<sup>6</sup> *Id.*



adulthood.<sup>7</sup> Delayed disclosures may be due to a variety of factors such as severity of abuse, gender, and social reactions to disclosure.<sup>8</sup> The mean age of disclosure is 48, and the average age of disclosure is closer to 52.2.<sup>9</sup> As a result of delayed disclosure and infrequent arrests and prosecutions, the vast majority of perpetrators of child sexual abuse are never arrested, let alone convicted, and therefore remain unknown to the community absent exposure by adults with knowledge of the abuse.

### **b. Effects of Child Sexual Abuse**

While it is common knowledge that child sexual abuse leaves a lasting impact on the individual survivors, child sexual abuse also affects a survivor's family, the immediate community in which the abuse occurred, and the public at-large. Organizations that invite children into their community are appealing to perpetrators, and absent sufficient identification and preventative measures, an institution can foster a culture where child sexual abuse proliferates. The presence of perpetrators within an institution is even more likely to occur where the institution consciously misrepresents the risk of abuse or conceals predators. As a result of an institution's conscious disregard for the safety of its members, victims, families, institutional members, and the general public are directly harmed and experience a loss of faith in the institution.

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<sup>7</sup> Sarah E. Ullman, *Relationship to Perpetrator, Disclosure, Social Reactions, and PTSD Symptoms in Child Sexual Abuse Survivors*, 16 J. of Child Sexual Abuse 19-36 (2008).

<sup>8</sup> *Id.*

<sup>9</sup> Spröber N et al, *Child sexual abuse in religiously affiliated and secular institutions: a retrospective descriptive analysis of data provided by victims in a government-sponsored reappraisal program in Germany*. 14 BMC Public Health 282 (2014).

### **i. Effects on Survivors**

Children who are sexually abused are more likely to have emotional and mental health problems such as posttraumatic stress disorder and depression, have suicidal ideations, engage in over-sexualized behavior, be involved in the delinquency or criminal system, and have substance use disorders.<sup>10</sup> In an Adverse Childhood Experiences (ACES) study performed by the Centers for Disease Control (CDC) and Kaiser-Permanente, researchers found that adverse childhood experiences, such as child sexual abuse, increase the risk of a variety of negative health, relationship, and psychological outcomes, including but not limited to, alcohol abuse, depression, heart disease, liver disease, financial stress, risk for intimate partner violence, risk of sexually transmitted diseases, suicide attempts, unintended pregnancies, and poor academic achievement.

<sup>11</sup> As the ACES study points out, this list is not exhaustive.

While survivors of child sexual abuse suffer physical, emotional, and psychological harm, they suffer further harm through the revelation that an institution responsible for their care, education, and religious or moral development, may have known about their abuse and allowed the abuse to continue. In a recent open-ended narrative discussion study, one survivor wrote “I wish abusers were appropriately punished. Not transfer [*sic*] to a new place to abuser [*sic*] others.”<sup>12</sup>

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<sup>10</sup> Elizabeth O. Paolucci et al., *A Meta-Analysis of the Published Research on the Effects of Child Sexual Abuse*, 135 The J. of Psychol. 17, 18-19 (2001).

<sup>11</sup> Centers for Disease Control and Prevention, *About the CDC-Kaiser ACE Study*, available at <https://www.cdc.gov/violenceprevention/acestudy/about.html>.

<sup>12</sup> Scott D. Easton, et. al., “*I Will Never Know the Person Who I Could Have Become*”: *Perceived Changes in Self-Identity Among Adult Survivors of Clergy-Perpetrated Sexual Abuse*, 34 J. of Interpersonal Violence 1, 16 (2019).

## **ii. Effects on Families of Survivors**

Child sexual abuse greatly impacts the family of the victim. Parents of survivors are often forced to relocate from the community or change locations within the community.<sup>13</sup> Parents of the survivor are often forced to take excessive time off work,<sup>14</sup> creating financial burdens on the entire family unit. A lesser realized fact is that any future family of the survivor is also impacted. Children of survivors suffer because, as adults, survivors may have mental health problems, substance use disorders, and become part of the criminal justice system. One important finding of the ACES study is that children whose parents experience mental illnesses, substance use disorders, and other negative effects that can be contributed to child sexual abuse, are also more likely to experience negative outcomes when they become adults. Thus, child sexual abuse can create a cycle that will have an effect on families for multiple generations. Additionally, for child sexual abuse occurring within an organization, survivors often have a fear of institutions, which limits the activities they allow their children to participate in and often serves as a obstruction to participation and engagement in important opportunities, such as youth leadership or religious programs.<sup>15</sup>

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<sup>13</sup> Tamara Blakemore et al., *The Impacts of Institutional Child Sexual Abuse: A Rapid Review of the Evidence*, 74 *Child Abuse and Neglect* 35 (2017), <https://doi.org/10.1016/j.chiabu.2017.08.006>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

### **iii. Effects on Survivor's Community: the Catholic Church as an Institutional Example**

Since the Spotlight team at the Boston Globe reported on systemic abuse within the Catholic Church and the extensive measures taken by the Church to cover up the abuse,<sup>16</sup> much attention has been paid to the effects of child sexual abuse within an institutional community. The Catholic Church has lost significant levels of public support and studies have found that the general public views the Catholic Church less favorably than they did before the abuse was revealed.<sup>17</sup> The revelation of the abuse has led many within the Church to lose faith in not only the institution, but also the tenets of their faith.<sup>18</sup> Organizations inviting children into their programs, such as the Catholic Church, are finding challenges in continuing to be a positive moral pillar in the community while its public reputation is diminished by continuing fraudulent acts surrounding child sexual abuse. This lack of trust and loss of faith is not the fault of the survivor, but rather is the direct effect of the institution's proliferation of the abuse.

### **iv. Effects on the General Public**

The impact of child sexual abuse within the institutional setting is not limited to the Catholic Church and its members. Research conducted by multiple organizations confirms that the general public is also deeply affected. For example, in a study of the effects of the revelation

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<sup>16</sup> Matt Carrol et al., *Church Allowed Abuse by Priests for Years*, The Boston Globe, (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>.

<sup>17</sup> Kathy Frankovic, *How The Child Sex Abuse Scandal Impacts the Catholic Church--And Catholics*, YouGov (Feb. 28, 2019), <https://today.yougov.com/topics/politics/articles-reports/2019/02/28/how-sex-abuse-scandal-impacts-catholic-church>.

<sup>18</sup> *Id.*

of abuse in the Catholic Church, distrust, betrayal, and deep anger were reported.<sup>19</sup> The general public is also more likely than Catholic members to believe that abuse is still occurring within the Church, and among both Catholic and non-Catholic members surveyed, almost half believe “many priests did it,” as opposed to “a few priests” or “hardly any priests.”<sup>20</sup> These numbers show an awareness and effect on the public outside of the institution. Additionally, when institutional abuse occurs, the distrust and loss of faith a survivor experiences expands from the survivor to the public at-large.<sup>21</sup> In the example of the Catholic Church, studies show a loss of trust in religion experienced by families, peers, and communities upon revelations of institutional child sexual abuse.<sup>22</sup>

Regardless of the identity of the perpetrator or an entity that allowed abuse to occur, the public is socially impacted by child sexual abuse. Survivors, as a result of the abuse, are more likely to commit crimes, be re-victimized in adulthood, suffer from physical medical conditions, suffer from mental health problems, abuse substances, impregnate teens or become pregnant as a teen, and experience academic difficulties.<sup>23</sup> An exact monetary value of the social impact of child sexual abuse or the proliferation of abuse cannot be calculated. What is known is that where crimes of secrecy are allowed to flourish, our communities are continuously affected for decades after the abuse occurs.

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<sup>19</sup> Blakemore, *supra* note 13.

<sup>20</sup> Frankovic, *supra* note 17.

<sup>21</sup> Blakemore, *supra* note 13.

<sup>22</sup> *Id.*

<sup>23</sup> Darkness to Light, *Child Abuse Statistics* (2017), available at [http://www.d2l.org/wp-content/uploads/2017/01/all\\_statistics\\_20150619.pdf](http://www.d2l.org/wp-content/uploads/2017/01/all_statistics_20150619.pdf).

## **v. Financial Consequences of Child Sexual Abuse**

The general public is impacted financially by child sexual abuse. According to a study published in the *Child Abuse and Neglect Journal* in 2018, the estimated average lifetime cost per victim of nonfatal child maltreatment is \$210,012, which includes \$32,648 in childhood health care costs; \$10,530 in adult medical costs; \$144,360 in productivity losses; \$7,728 in child welfare costs; \$6,747 in criminal justice costs; and \$7,999 in special education costs.<sup>24</sup> Insurance cannot cover all of the costs of child sexual abuse, such as mental health treatment, special education services, child welfare services, medical procedures, and productivity losses. At the end of the day, survivors and the general public pay these costs, and not the perpetrators or the institutions that knew about the abuse and failed to protect children under their care.

Economic losses related to child sexual abuse affect every member of the public, and no member of the public can avoid it, whether or not she is aware of the abuse. Institutions that foster a culture where abuse can continue even after it is discovered increase not only the number of victims, but also the economic burden to the public. Without the ability for a survivor to hold perpetrators accountable for child sexual abuse, the public's ability to take preventative measures to reduce the costs of the abuse is impaired.

## **3. State Survey of Child Sexual Abuse Statutes of Limitation**

Over the last several years state legislatures across the United States have overwhelmingly opted to expand civil and criminal statutes of limitation (SOL) for child sexual

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<sup>24</sup> Cora Peterson et al., *The Economic Burden of Child Maltreatment in the United States, 2015*, 86 *Child Abuse and Neglect* 178, 181 (2018).

abuse claims. Four major areas of legislative reforms have emerged for civil claims: 1) abolishing the civil statute of limitations for child sexual abuse claims, 2) creating a retroactive open window, 3) extending the statute of limitations for survivors, and 4) providing a delayed discovery provision.<sup>25</sup> Given the increase in media attention concerning child sexual abuse in recent years,<sup>26</sup> “[m]ost states and the federal government made access to justice, or SOL [statute of limitation] reform, a priority.”<sup>27</sup>

In 2020, 28 states introduced SOL reform bills and 14 introduced retroactive open window provisions.<sup>28</sup> Six states introduced bills to extend the civil SOL and 15 states introduced legislation that would eliminate the civil SOL altogether.<sup>29</sup> The trend to expand civil remedies did not begin in 2020. In 2019, 15 states passed legislation that extended the civil SOL, one state eliminated the civil SOL, and 9 states passed legislation that included revival windows.<sup>30</sup>

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<sup>25</sup> ChildUSA, *Child Sex Abuse Statute of Limitations*, available at <https://www.childusa.org/sol/> (last visited Mar. 3, 2020).

<sup>26</sup> See, e.g., Kirk Johnson, *Court Approves Release of Boy Scouts’ ‘Perversion Files’*, NY Times (June 14, 2012), <https://www.nytimes.com/2012/06/15/us/court-approves-release-of-boy-scouts-perversion-files.html>; Laurie Goodstein & Sharon Otterman, *Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says*, NY Times (Aug. 14, 2018), <https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html>; Marisa Kwiatkowski, Mark Alesia & Tim Evans, *A Blind Eye to Sex Abuse: How USA Gymnastics Failed to Report Cases*, IndyStar (updated Jan. 31, 2018, 3:58 PM), <https://www.indystar.com/story/news/investigations/2016/08/04/usa-gymnastics-sex-abuse-protected-coaches/85829732/>.

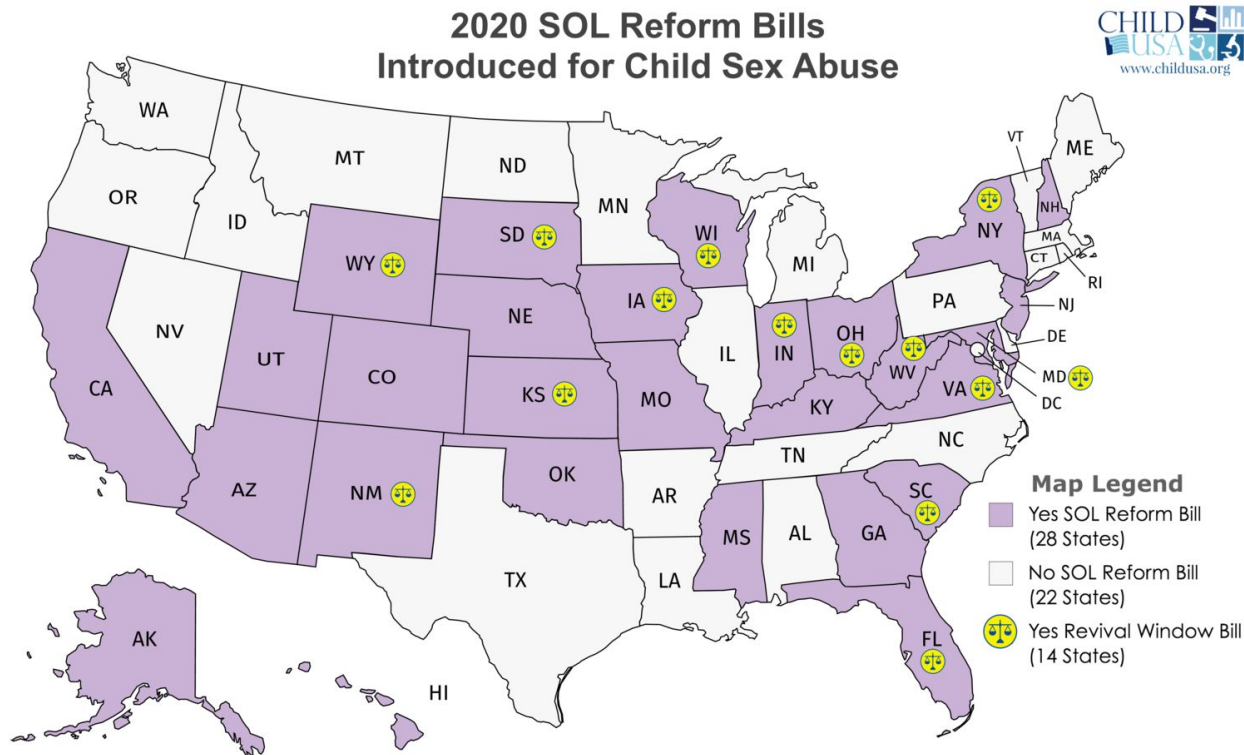
<sup>27</sup> Marci A. Hamilton, *Child Sex Abuse Statute of Limitations Reform in the Wake of the Boston Archdiocese Clergy Sex Abuse Scandal January 2002*, (Jul. 2018).

<sup>28</sup> ChildUSA, *2020 SOL Summary* (2020), available at <https://www.childusa.org/2020sol/> (last visited March 3, 2020).

<sup>29</sup> *Id.*

<sup>30</sup> ChildUSA, *supra* note 25.





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#### 4. Georgia in Comparison to National Trends in Child Sexual Abuse SOL Reform

Currently, survivors of child sexual abuse in Georgia can file civil claims under two circumstances: 1) prior to the age of 23 or 2) if they were abused on or after July 1, 2015, within two years of the discovery that the abuse caused the resulting harm.<sup>32</sup> Forty-four states currently allow claims for survivors above the age of 30 and/or have a discovery rule over 2 years, while only six states, including Georgia, have civil SOLs that only allow civil claims for survivors under the age of 30. Despite having passed an amendment to O.C.G.A. § 9-3-33.1, colloquially known as the Hidden Predator Act, Child USA, a national think tank for child protection, ranked

<sup>31</sup> ChildUSA, *supra* note 29.

<sup>32</sup> Hidden Predator Act, O.C.G.A. § 9-3-33.1 (2015).

Georgia as one of the worst states for SOL revival windows as well as one of the worst states for survivors of child sexual abuse seeking access to the civil justice system.<sup>33</sup>

In passing the Hidden Predator Act, Georgia was one of eighteen states to revive expired civil SOLs for child sexual abuse.<sup>34</sup> Of those eighteen states, thirteen allowed survivors to sue entities or private organizations.<sup>35</sup> Georgia was one of only five states that protected entities or private organizations from civil liability under its open window provision.<sup>36</sup>

Georgia falls below the national standard for SOLs for civil child sexual abuse claims. Nine states have recognized the significance of child sexual assault and have eradicated SOLs for civil child sexual abuse claims completely.<sup>37</sup> Out of the forty<sup>38</sup> states with age limits on SOLs (not including delayed discovery provisions), nine have SOLs at or below age 23,<sup>39</sup> while thirty-one have SOLs above age 23. Of those with SOLs above age 23, twelve states have SOLs between ages 23 to 30,<sup>40</sup> while nineteen states have SOLs above age 30.<sup>41</sup> Thus, in comparing Georgia to national trends, Georgia's statute of limitations falls behind in protecting survivors.

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<sup>33</sup> ChildUSA, *2019 SOL Summary* (2019), available at <https://www.childusa.org/2019sol/> (last visited March 3, 2020).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

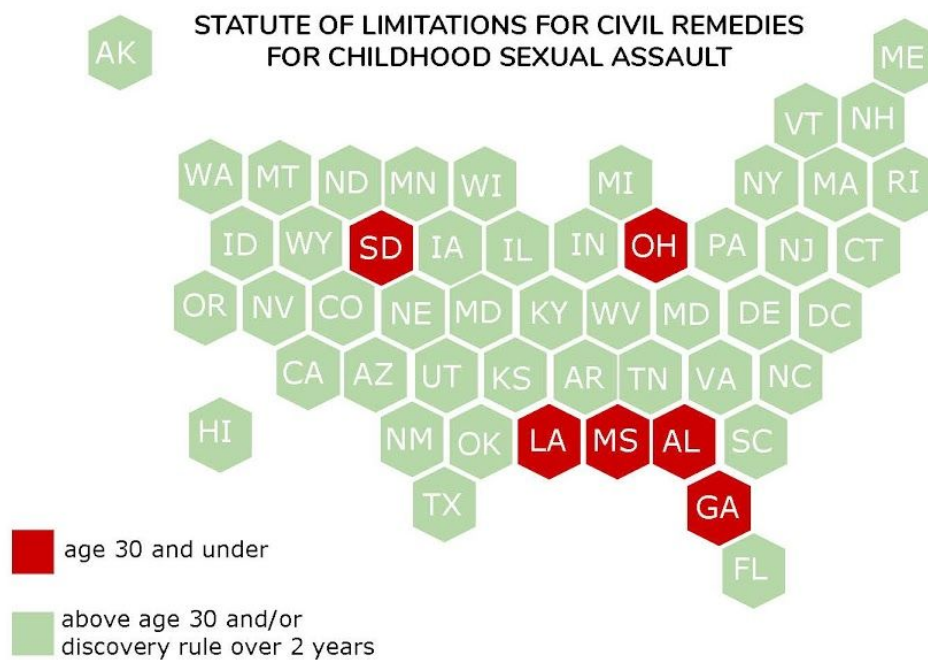
<sup>37</sup> These states are Alaska, Delaware, Florida (for victims under age 16 at the time of the abuse), Illinois, Maine, Minnesota, Nebraska, Utah, and Vermont.

<sup>38</sup> North Dakota does have a statute of limitations via delayed discovery, but does not have an age limit and is therefore in neither sets of data.

<sup>39</sup> These states include: Arkansas (21), Georgia (23), Idaho (23), Indiana (22), Iowa (19), Kansas (21), South Dakota (21), Washington (21), and West Virginia (22).

<sup>40</sup> These states include: Alabama (25), Colorado (24), Hawaii (26), Kentucky (28), Louisiana (28), Michigan (28), Mississippi (24), Montana (27), New Mexico (24), North Carolina (28), South Carolina (27), and Wyoming (26).

<sup>41</sup> Arizona (30), California (40), Connecticut (48), Maryland (38), Massachusetts (53), Missouri (31), Nevada (38), New Hampshire (30), New Jersey (55), New York (55), Ohio (30), Oklahoma (45), Oregon (40), Pennsylvania (30), Rhode Island (53), Tennessee (33), Texas (48), Virginia (38), and Wisconsin (35).



(chart adapted from childusa.org Child Sex Abuse Statutes of Limitation Reform from January 2002 to December 2019 Report)

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## 5. Domestic Minor Sex Trafficking

### a. Scope of the Issue

According to the National Center for Missing and Exploited Children, children who have experienced childhood sexual abuse are at greater risk of becoming victims of domestic minor sex trafficking.<sup>43</sup> The Federal Trafficking Victims Protection Act defines the crime of human trafficking as: “The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where such an act is induced by force, fraud, or coercion, or

<sup>42</sup> Adapted from ChildUSA.org’s Child Sex Abuse Statutes of Limitation Reform from January 2002 to December 2019 Report. See ChildUSA, *Child Sex Abuse Statutes of Limitation* (2020), available at <https://www.childusa.org/sol>.

<sup>43</sup> The National Center for Missing and Exploited Children, *Child Sex Trafficking: Overview*, available at <http://www.missingkids.org/theissues/trafficking> (last visited Mar. 4, 2020).

in which the person induced to perform such act has not attained 18 years of age.”<sup>44</sup> Atlanta is one of the largest breeding grounds for sex trafficking and prostitution, due both to its size as a major city and the fact that the busiest airport in the world is located in the city. Studies estimate the value of Atlanta’s underground sex trafficking economy to be \$290,000,000 a year, a large portion of which can be attributed to the exploitation of minors.<sup>45</sup> Many victims are youth in the child welfare system and/or runaways, but some are recruited from middle class homes as well.<sup>46</sup>

**b. Civil Remedies for Human Trafficking**  
**i. Federal Civil Remedies**

First passed in 2000, the Trafficking Victims Protection Act (“TVPA”) addresses both criminal and civil legal remedies for victims of human trafficking. In 2003, the TVPA was amended to provide a civil remedy for victims to recover damages, which was reauthorized and expanded in 2008. The expansion allowed claims against “whoever knowingly benefits, financially or by receiving anything of value, from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter.” In 2015, the TVPA was again amended to expand the statute of limitations for domestic minor sex trafficking to 10 years after a victim’s 18th birthday and to include liability to those who “knowingly benefit” from trafficking.

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<sup>44</sup> Trafficking Victims Protection Act (TVPA) of 2000, Pub. L. No. 106-386, Division A, § 103(8), 114 Stat. 1464 (signed into law on October 29, 2000); codified as amended at 22 USC 7102 § 103(8).

<sup>45</sup> Morgan Brinlee, *13 Sex Trafficking Statistics That Put The Worldwide Problem Into Perspective*, Bustle (July 30, 2018).

<sup>46</sup> Linda A. Smith et al., *The National Report on Domestic Minor Sex Trafficking: America’s Prostituted Children*, SharedHope Int’l (May 2009), available at [http://sharedhope.org/wp-content/uploads/2012/09/SHI\\_National\\_Report\\_on\\_DMST\\_2009.pdf](http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf).

On average, 30 cases a year are filed in Federal courts under the TVPA, the vast majority of which are for labor trafficking while only eight percent of cases have been for sex trafficking. Despite the low number of claims being filed for sex trafficking, the results in cases have been positive for victims, and victims have been awarded over \$100,000,000 in decisions and settlements, the majority of which comes in the way of punitive damages awards.

## **ii. State Civil Remedies**

In 40 of the 50 states, state legislatures have passed legislation allowing victims of human trafficking to seek civil remedies against their trafficker. Several states allow the human trafficking survivor to bring a claim against anyone who knew or should have known that their business was profiting at the expense of human trafficking victims. For example, Pennsylvania has enacted legislation that attaches civil liability not only to the traffickers themselves, but anyone who "knowingly markets or provides its goods or services" to the sex-trade controller.<sup>47</sup> Similarly, under Michigan's Human Trafficking Victims Compensation Act, survivors may seek civil remedies against not only those who "knew or should have known" about trafficking activities, but also those who knowingly benefit "from participation in an enterprise, if the enterprise has engaged in an act prescribed under this provision."<sup>48</sup> Twenty-four of the 40 states that have civil remedies for survivors of human trafficking have placed those provisions alongside the penal code, while other states have opted to create remedies under the civil code. Importantly, most states make explicit that a person or entity does not need to be charged or convicted under the criminal code in order for a victim to sustain a civil action, nor must they be

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<sup>47</sup> 18 Pa. Stat. and Cons. Stat. Ann. § 3051(b)(1) (West 2014).

<sup>48</sup> Mich. Comp. Laws Ann. § 750.462d (West 2015).

held to the criminal standards of proof to be labeled a trafficker for civil liability purposes. The reasoning behind not requiring a criminal conviction or standard of proof is that such a criminal standard as a gatekeeper for civil liability would be a hindrance to the availability of recovery to victims.

### **c. Georgia and Civil Remedies for Victims of Domestic Minor Sex Trafficking**

Currently, survivors of domestic minor sex trafficking have limited access to civil remedies under Georgia law. Child survivors of “trafficking a person for sexual servitude” may only seek civil claims, but only if the trafficking occurred on or before July 1, 2015.<sup>49</sup> Otherwise, Georgia does not have specific state civil remedies for survivors of domestic minor sex trafficking who were trafficked prior to July 1, 2015, for child survivors of other forms of trafficking, such as labor trafficking, or for adult survivors of any form of human trafficking. As a result of having no specific civil remedy for most survivors of trafficking in Georgia, most survivors must seek claims within two years after the injury occurs, or two years after the age of majority for child survivors.<sup>50</sup>

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<sup>49</sup> Hidden Predator Act, O.C.G.A. § 9-3-33.1(b)(1)(A) (West 2019).

<sup>50</sup> Hidden Predator Act, O.C.G.A. § 9-3-33 (West 2015).

**CIVIL REMEDIES AVAILABLE TO HUMAN TRAFFICKING VICTIMS  
IN THE UNITED STATES AND TERRITORIES**



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## 6. Retroactive Legislation

### a. Repressed Memory and False Claims<sup>52</sup>

One of the most common concerns with allowing retroactive claims is that false claims will be filed against innocent defendants and that evidence of repressed memory is not sound. However, concerns over false claims and disbelief in repressed memories lack significant evidence and have overwhelmingly been debunked.

<sup>51</sup> Adapted from an NCSL report. See National Conference of State Legislators, *Human Trafficking State Laws*, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx#tabs-2>.

<sup>52</sup> For more information, see, Hetherington, E., et al., "Statute of Limitations for Child Sexual Abuse Civil Lawsuits in Georgia: Update on Case Findings and Opportunities for Reform," Wilbanks CEASE Clinic (Apr. 2019), <http://cease.law.uga.edu/sites/default/files/u61/2018-2019%20CEASE%20White%20Paper%20April%208%202019.pdf>.



Several studies have been conducted outlining the psychological consequences of child sexual abuse on survivors. Clinical, non-clinical, and random survey studies show that individuals who are victims of child sexual abuse experience some degree of delayed discovery that the child sexual abuse caused lifetime psychological harm. For example, one clinical study that looked at 53 female victims of incest found that 64% “experienced some varying degree of dissociative amnesia” and that 28% suffered “severe memory deficits.”<sup>53</sup> Another study found that approximately 33% of survivors of child sexual abuse have reported or show signs of complete amnesia of the abuse at some point during their lives.<sup>54</sup> Studies have also found that childhood trauma such as child sexual abuse can cause neurobiological defects that can affect memory. One study conducted by the Centers for Disease Control found a relationship between “exposure of the developing brain to the stress response with resulting impairment in multiple brain structures and functions,” such as memory retention and recall.<sup>55</sup>

In addition to sound and extensive evidence of the validity of repressed memory, a fear of false claims is misguided. Only 4-8% of child sexual abuse claims are estimated to be false.<sup>56</sup> Most of those false claims are seen in custody cases, and not in civil child sexual abuse personal injury claims. In fact, there is an absence of evidence in states where the statute of limitations was extended showing that the extension led to an increase in frivolous claims. Therefore it is

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<sup>53</sup> Judith L. Herman and Emily Schatzow, *Recovery and Verification of Memories of Childhood Sexual Trauma*, 4 *Psychoanalytic Psych.* 1 (1987).

<sup>54</sup> David H. Gleaves, *The Evidence for “Repression”: An Examination of Holmes (1990) and the Implications for the Recovered Memory Controversy*, 5 *J. of Child Sexual Abuse* 1 (1996).

<sup>55</sup> Robert F. Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood*, 256 *Eur. Archives of Psychiatry & Clinical Neuroscience* 174 (2006).

<sup>56</sup> Mark Everson & Barbara Boat, *False allegations of sexual abuse by children and adolescents*, 28 *J. of the American Academy of Child & Adolescent Psychiatry* 230 (1989).

unlikely that a statute of limitations that allows for more civil claims would result in an overwhelming number of false claims or frivolous lawsuits.

Additionally, Georgia law already provides for protections against frivolous lawsuits. For example, defendants can request attorney's fees for and litigation expenses for claims "that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment," where "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.<sup>57</sup> Defendants can also file complaints for abusive litigation where, if successful, they "shall be entitled to all damages allowed by law as proven by the evidence, including costs and expenses of litigation and reasonable attorney's fees."<sup>58</sup>

Finally, there is also a strong public policy argument for extending the statute of limitations despite the fear of frivolous litigation: the state of Georgia prioritizes protecting children from abuse.<sup>59</sup> Given the small number of false claims of abuse paired with protections against frivolous claims already provided under Georgia law, an extension of the statute of limitations meets the state's policy priorities.

#### **b. Constitutionality of Retroactive Civil Statutes of Limitation**

A common concern with legislation that is applied retroactively is whether or not such legislation is constitutional. Based on both Federal and Georgia law, retroactive civil statutes of legislation are constitutional. Under United States Supreme Court precedent, retroactive

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<sup>57</sup> O.C.G.A. § 9-15-14(b) (2018).

<sup>58</sup> O.C.G.A. § 51-7-83(a) (2018).

<sup>59</sup> *See e.g.*, O.C.G.A. § 15-11-107 ("the religious rights of a parent, guardian, or legal custodian shall not limit the access of a child to medical care in a life-threatening situation or when the condition will result in serious disability"); *Hamilton v. State*, 210 Ga. App. 398, 399 (1993) ("Our legislature has determined that the public policy of protecting this State's children against crimes outweighs the policy of protecting the harmony and unity of marriage.").

legislation is constitutional when the statute clearly states its intent to be retroactively applied and it does not violate any other constitutional provisions.<sup>60</sup> Statutes of limitations are created by legislatures and are procedural in nature.<sup>61</sup> Legislatures may alter statutes of limitation so as long as alterations do not deprive someone of life, liberty, or property without due process of the law.<sup>62</sup>

### **i. Procedural Due Process**

Courts have overwhelmingly found that statutes of limitations are procedural in nature and that retroactive statutes of limitation do not violate substantive due process because there is no vested right in a course of procedure. For example, in *Deal v. Coleman* the Georgia Supreme Court noted “a distinction in some cases between ‘substance’ and mere ‘procedure,’ explaining that ‘there are no vested rights in any course of procedure.’”<sup>63</sup> Statutes of limitation have been recognized as being procedural in nature and not substantive.<sup>64</sup>

Since statutes of limitation are procedural in nature, they will be upheld so long as they do not deprive anyone of life, liberty or property without due process. In *Chase Securities Corp.*, the United States Supreme Court stated that, “Statutes of limitation find their justification in necessity and convenience rather than in logic... Their shelter has never been regarded as what is now called a ‘fundamental’ right’ in nature.”<sup>65</sup> The Court in *Chase Securities Corp.* clearly lays out that statutes of limitations are procedural in nature and they can be changed by the legislature if the retroactive application does not deprive anyone of life, liberty, or property without due process. Georgia Courts would likely find that retroactive civil statute of limitations for child

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<sup>60</sup> *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1993).

<sup>61</sup> *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945).

<sup>62</sup> *Id.* at 316.

<sup>63</sup> 294 Ga. 170, 177 (2013).

<sup>64</sup> *Canton Textile Mills v. Lathem*, 253 Ga. 102 (1984).

<sup>65</sup> *Chase Sec.*, 325 U.S. at 304.

sexual abuse do not deprive anyone of life, liberty, or property. Rather, the extension of the law would simply allow claims to be brought which were previously barred by an arbitrary statute of limitations.

Following the precedent of the United States Supreme Court, the Georgia Supreme Court similarly concluded that “the legislature may revive a . . . claim which would have been barred by a previous limitation period by enacting a new statute of limitation, without violating our constitutional prohibition against retroactive laws.” *Canton Textile Mills v. Lathem*, 253 Ga. 102, 105 (1984). While that conclusion concerned the Georgia Constitution’s prohibition against retroactive laws, the Court expressly adopted the logic of *Chase Securities*, indicating that their conclusion applies to due process as well.

## **ii. Substantive Due Process**

Even if retroactive civil statutes of limitation were found to be substantive in nature, they would likely be upheld by Georgia courts. Under Article I, Section I, Paragraphs I of the Georgia Constitution, “[n]o person shall be deprived of life, liberty, or property except by due process of law.”<sup>66</sup> To succeed on a substantive due process claim, the challenge must involve a fundamental right or a suspect class, otherwise it is evaluated under “the lenient ‘rational basis’ test.”<sup>67</sup> Alleged perpetrators of child sexual abuse do not fall into a suspect class and while they may claim that this provision violates substantive due process rights, this claim is meritless since “[t]here is no vested right in a statute of limitation.”<sup>68</sup> Similarly, at the federal level, in determining the validity of retroactive legislation, courts apply a variation of the rational basis

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<sup>66</sup> Ga. Const. Art. 1, § 1, ¶ I (West 2017).

<sup>67</sup> *Zarate-Martinez v. Echemendia*, 299 Ga. 301, 309 (2016).

<sup>68</sup> *Huggins v. Powell*, 315 Ga. App. 599, 602 (2012).

test that only requires a successful showing that “the retroactive application of the legislation is itself justified by a rational legislative purpose.”<sup>69</sup> The state of Georgia has a substantial interest in identifying child predators and mending harm caused to their victims. Therefore, it is likely that Georgia Courts will find that the a civil retroactive SOL for child sexual abuse is justified by a rational legislative purpose, and that it does not infringe upon an individual’s substantive due process rights.

Georgia Courts will also likely find that retroactive statutes of limitation do not violate ex post facto laws. While both the United States and Georgia Constitution forbid the enactment of ex post facto laws, this prohibition only applies to criminal statutes or laws affecting substantive rights. Statutory enactments which solely affect court procedure are unaffected by this limitation.

<sup>70</sup> Substantive law creates rights, duties, and obligations while a procedural law proscribes the method of enforcing those rights, duties, and obligations. Since this Constitutional prohibition applies only to criminal laws with substantive effects, a civil statute of limitation with retroactive application and that is procedural in nature, would likely be found to be constitutional under state and federal law.<sup>71</sup>

### **iii. Equal Protection**

Retroactive statutes of limitations will likely withstand equal protection challenges, as well. Similar to the due process analysis, a successful equal protection challenge must involve a

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<sup>69</sup> Patrick T. Murphy, Note, *Section 27A of the SEA: An Unplugged Lampf Sheds No Constitutional Light*, 78 Minn. L. Rev. 197, 203 (1993).

<sup>70</sup> *Murphy v. Murphy*, 295 Ga. 376, 377 (2014).

<sup>71</sup> *See Huggins*, 315 Ga. App. at 602 (holding that where a statute governs only procedure of the courts, such as statutes of limitation, there is no question of retroactivity); *see also Canton Textile Mills*, 243 Ga. at 105 (holding that the legislature may enact a new statute of limitation for a workers’ compensation claim without violating the constitutional prohibition against retroactive laws).

fundamental right or a suspect class. Since there is no fundamental right to a statute of limitation, and alleged child sexual abusers do not fall under a suspect class, courts will use a rational basis review test to determine whether retroactive statutes of limitation violate equal protection.<sup>72</sup>

For legislation to survive an equal protection claim, “the classifications drawn in the statute must bear a rational relationship to a legitimate end of government not prohibited by the Constitution.”<sup>73</sup> Again, based on the State’s substantial interest in identifying child predators and mending harm caused to their victims, courts will likely find that a civil retroactive SOL for child sexual abuse claims is justified by a rational legislative purpose and that it does not infringe upon an individual’s substantive due process rights.

### **c. Floodgates of Litigation**

Several states have passed retroactive windows allowing survivors previously barred from filing claims to seek damages within a limited period of time. While data is limited, an analysis of cases filed during retroactive windows overwhelmingly demonstrates that a floodgate of litigation is unlikely. The chart below summarizes the total number of civil cases filings in a sample of states in 2017<sup>74</sup> and compares the total filings to the number of cases filed under the retroactive windows. The resulting comparison demonstrates that not one jurisdiction was overwhelmed with a floodgate of litigation.

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<sup>72</sup> *Zarate-Martinez*, 299 Ga. at 309.

<sup>73</sup> *Id.* at 309 (quoting *State v. Nankervis*, 295 Ga. 406, 408 (2014)).

<sup>74</sup> National Center for State Courts, *2016 Civil Caseloads - Trial Courts* (2016), available at [http://popup.ncsc.org/CSP/CSP\\_Intro.aspx](http://popup.ncsc.org/CSP/CSP_Intro.aspx) (The total number of cases is based on data from 2016.).

	Number of cases from the open window *current 2017 <sup>75</sup>	Total number of all civil filings <sup>76</sup>	Percentage of filings that child sex abuse cases would be of total
Delaware	1175	67,523	1.74%
California	1150	827,885	.14%
Minnesota	1000	161,484	.62%
Hawaii <sup>77</sup>	200	34,767	.57%
Georgia	10 <sup>78</sup>	699,736	.001%
Utah	1	145,423	.000006%

As demonstrated by the table above, the effect that new child sex abuse cases had in jurisdictions with retroactive windows is typically miniscule. The highest percentage increase of new cases seen was approximately 1.74%. The fear that extending the statute of limitations or providing for a retroactive window that allows for entity liability would lead to a flood of cases is not backed up by the data available from other states and is unlikely to occur in the State of Georgia, even if entity liability is allowed in the retroactive provision.

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<sup>75</sup> ChildUSA, *Relative Success of Civil SOL Window Statutes State-by-State* (2017), <https://www.childusa.org/law/>.

<sup>76</sup> National Center for State Courts, *supra* note 61.

<sup>77</sup> Like in Georgia, Hawaii also excluded entity liability from its retroactive open window. However, the other states listed in the chart include claims against entities.

<sup>78</sup> CEASE Clinic has confirmed only 10 cases filed under the Hidden Predator Act's open window (Paulding, Monroe, Fulton, Gwinnett, Lee, Carroll, Bartow, Pierce, Toombs, and Clayton Counties). This number does not include claims of entity liability filed under other legal theories and statutes of limitation, such as public nuisance or Georgia's Racketeer Influenced and Corrupt Organizations (RICO) Act.



#### **d. New York's Child Victims Act**

In August 2019, a retroactive open window provision for child sexual abuse civil claims went into effect in the state of New York under the Child Victims Act (CVA). While the New York law cannot predict the exact effect of similar legislation in other states, a closer look at New York's open window may be an informative predictor of what could occur in Georgia. The open window under the CVA was limited to a period of one year and allowed for claims against both entities and individual perpetrators. On August 14, 2019, the day the law took effect, a reported 385 lawsuits were filed by noon, causing a slew of headlines claiming that the CVA resulted in a "floodgate of litigation."<sup>79</sup> However, a close look at the number of additional civil filings resulting from the open window compared to the number of overall annual civil case filings, reveals that the headlines were misleading and that a floodgate did not in fact occur.

In 2018, the year before the CVA went into effect, litigants filed a total of 1,341,290 civil cases across the state of New York.<sup>80</sup> In the New York Supreme Court, which, among other types of cases, handles claims seeking damages over \$25,000 and is the equivalent of Georgia's Superior Courts, 176,151 new civil cases were filed in 2018.<sup>81</sup> Assuming that the number of case filings for 2019 would be substantially similar to 2018 absent an open window, the 385 cases filed on the first day of the retroactive window would constitute 0.02% of the total civil cases filed in the state, and 0.22% of the total civil cases filed in the New York Supreme Court. More

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<sup>79</sup> Steve Orr, *Hundreds of Child Sex Abuse Claims Filed on First Day of New York's Child Victims Act*, USA Today (Aug. 14, 2019),

<https://www.usatoday.com/story/news/nation/2019/08/14/new-york-child-victims-act-lawsuits/2007257001/>

<sup>80</sup> New York State Unified Court System, *2018 Annual Report* 39 (2019), available at [http://www.nycourts.gov/legacypdfs/18\\_UCS-Annual\\_Report.pdf](http://www.nycourts.gov/legacypdfs/18_UCS-Annual_Report.pdf).

<sup>81</sup> *Id.*

recent reports suggest that 1,300 civil lawsuits pertaining to child sexual abuse have been filed in total since the window opened in August 14, 2019.<sup>82</sup> An increase of 1,300 cases to the number of cases filed in 2018 would constitute 0.097% of the total civil cases filed in the state, and 0.74% of the total civil cases filed in the New York Supreme Court. Thus, while the open window did result in an increase of filings, the increase is relatively low and does not represent a floodgate of lawsuits.

Another important consideration in analyzing the effects of New York's open window is the types of civil cases seen in New York courts. In 2018, the largest grouping of civil case filings in New York were classified as "Other," which was made up of guardianship, arbitration, real property, Article 78 (state or local agency appeals), mental hygiene, and special proceeding cases.<sup>83</sup> Outside of the "Other" category, New York saw the largest number of civil case filings in uncontested divorces (20%), motor vehicle personal injury claims (15.5%), foreclosures (8.5%), and contested divorces (5.5%).<sup>84</sup> The number of child sexual abuse civil claims filed in 2018 was not reported as a separate category and any such claims would have been included under the "other tort" category, which constituted 11.5% of all Supreme Court civil case filings.<sup>85</sup> This report assumes that, prior to New York's Child Victims Act becoming law, the number of child sexual abuse civil claims was statistically insignificant, or otherwise the category would have been reported, such as medical malpractice claims, which made up 1.5% of total civil Supreme Court filings in 2018. Assuming civil case filings in 2019 will be similar to 2018 absent

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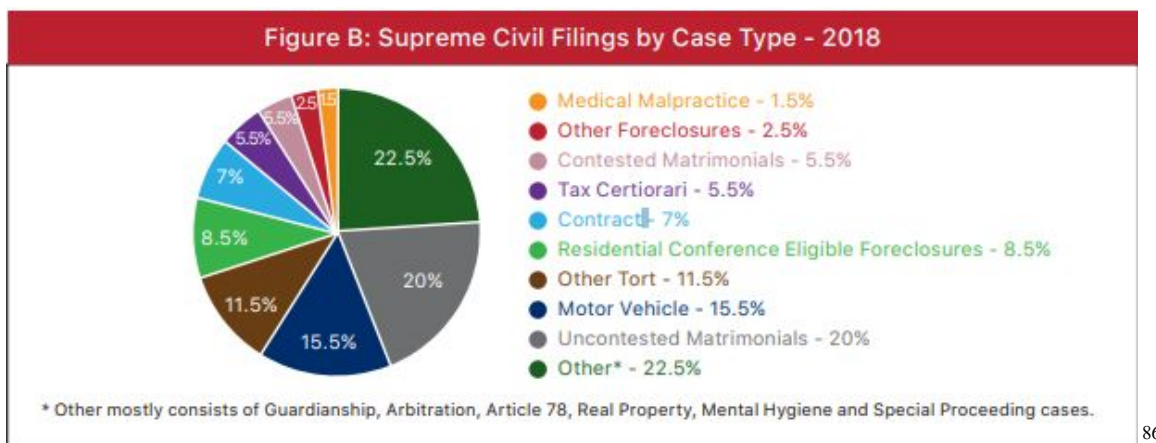
<sup>82</sup> Jane Flasch, *NY Senate bill would extend Child Victims Act by one year*, WHAM (Jan. 20, 2020), <https://13wham.com/news/state/ny-senate-bill-would-extend-child-victims-act-by-one-year>.

<sup>83</sup> New York State Unified Court System, *supra* note 80.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

an open window, a 0.74% increase in the total number of civil cases filed in the New York Supreme Court would be so low as to not even merit its own reporting category.



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In comparing the results of the open window in New York when trying to predict the effect of similar legislation in Georgia, it is also important to note that of the 385 lawsuits filed the day New York’s retroactive window went into effect, “[t]he vast majority...named Catholic priests as abusers and sought damages from the diocese and parishes in which the offenses allegedly occurred.”<sup>87</sup> Catholics represent the largest faith base in New York, and the Church reportedly serves 7.9 million members in the state, or approximately 38% of the state.<sup>88</sup> Conversely, in 2014, the Catholic Church reportedly served approximately 963,000 members in Georgia, or approximately 9% of the state.<sup>89</sup> Given Georgia’s significantly lower Catholic population, the state may see fewer filed claims under a similar retroactive window.

<sup>86</sup> *Id.*

<sup>87</sup> Orr, *supra* note 66.

<sup>88</sup> New York State Catholic Conference, *New York’s Catholic Church-How We Serve*, <https://www.nyscatholic.org/what-is-the-new-york-state-catholic-conference/new-yorks-catholic-church-how-we-serve/> (last accessed Mar. 3, 2020).

<sup>89</sup> Pew Research Center, *Religious Landscape Study* (2014), available at <https://www.pewforum.org/religious-landscape-study/state/georgia/>.

#### **e. Impact of Civil Lawsuits and Compensation Funds on Survivors**

Another common concern is that the civil legal process may retraumatize survivors of child sexual abuse. However, civil lawsuits and other means by which survivors may obtain compensatory and other damages for child sexual abuse have been found to have positive therapeutic effects. For example, a study out of Ontario, Canada evaluated how survivors of sexual abuse experienced the legal system.<sup>90</sup> The study evaluated three types of civil compensation: civil lawsuits, compensation claims under a government crime victims' compensation fund, and a unique fund created through an agreement between the government and a school where a large number of children were abused. The study found that no single process for civil recovery is "best," but found, rather, that

the most important conclusion that should be drawn is that society ought to provide a number of legal options to victims of sexual abuse in order that survivors themselves can elect the appropriate balance of confrontation, vindication, monetary and in-kind compensation, and other variables, which best match their therapeutic needs.<sup>91</sup>

The researchers conducting the Ontario study sought information related to the reasons survivors were seeking civil remedies. The study found that 82% of survivors sought public affirmation of the wrongs committed against them, as well as closure. Researchers noted that overwhelmingly survivors wanted to be heard. The published study includes direct quotes from survivors, such as, "I needed someone to say that they know all the hurt I'd been through, all the wrong" and "I needed to feel that I had done nothing wrong. I shouldn't have to hide. So, the public trial would allow me that."<sup>92</sup> In addition to public affirmation and closure, survivors

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<sup>90</sup> Bruce Feldthusen et al., *Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse: An Empirical Study*, 12 Can. J. Women & Law 66 (2000).

<sup>91</sup> *Id.* at 112.

<sup>92</sup> *Id.* at 75-76.

interviewed for the study sought claims in order to receive apologies (38%), to deter the perpetrator from harming others (38%), to be awarded monetary damages (41%), and to seek “the justice that they felt they had been denied” (72%).<sup>93</sup> One survivor interviewed for the study stated, “I thought if I didn’t pursue civil litigation, I wouldn’t get justice.”<sup>94</sup>

While 84% of survivors interviewed for the Ontario study reported some “negative emotional consequences” the researchers found that, overall, seeking civil justice had a positive therapeutic effect.<sup>95</sup> Positive effects were seen especially where the survivor was able to actively participate in the process, was treated with dignity, received emotional support throughout the legal process, and perceived the process to be procedurally fair.<sup>96</sup> The study notes that “[t]he process of seeking empowerment through requesting compensation... implies that these features would have a direct impact on healing.”<sup>97</sup>

The Ontario study found that civil litigants in sexual abuse cases received higher monetary awards, on average, than those receiving damage awards through the two compensation funds. The study reports that on average civil litigants received \$209,833 in damages, with awards ranging from \$42,500 to \$479,000.<sup>98</sup> Survivors from the school compensation fund were each awarded \$60,000 and survivors who sought compensation through the government fund for victims of crime received awards ranging from \$5,000 to \$10,000.<sup>99</sup> Survivors receiving awards from all three avenues found that “the financial award was gratifying

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<sup>93</sup> *Id.* at 76-79.

<sup>94</sup> *Id.* at 80.

<sup>95</sup> Bruce Feldthusen et al., *Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse: An Empirical Study*, 12 Can. J. Women & Law 66 (2000).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 97.

<sup>99</sup> *Id.*

because it symbolized an acknowledgement and understanding of the impact of their experiences of assault and abuse.”<sup>100</sup> One survivor reported, “My experience was worth more than the money awarded,” while another stated, “The adjudicator heard me, believed me. It gave me something I thought I would never have. It gave me ‘Someone believed me.’”<sup>101</sup>

#### **f. Impact of Civil Claims on Entities**

Finally, a common concern with retroactive legislation is that civil claims will force organizations that may otherwise benefit society to close their doors. While the total impact on entities is unknown, based on anecdotal reports through various news reports, the impact on entities, both large and small, is likely minimal. Research and literature exploring the impact of civil claims on entities is limited. On one hand, since the national trend towards allowing more survivor civil claims is relatively new, we may not yet know the full impact on entities. On the other hand, an absence of reports of negative impacts on entities may demonstrate that allowing civil claims for child sexual abuse has minimal negative impact on entities while having a significant positive impact for survivors.

This report will not discuss the anticipated impact of bankruptcy on entities, such as a handful of Catholic Church Dioceses or the Boy Scouts of America. However, for victims whose abuse claims fall under Georgia’s jurisdiction and who were abused by members of entities that have filed for bankruptcy, Georgia’s current civil statute of limitations for child sexual abuse claims will likely bar survivors from seeking awards under victims’ compensation funds created by bankruptcy courts. Victims in states with retroactive windows or that allow for claims for

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<sup>100</sup> Bruce Feldthusen et al., *Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse: An Empirical Study*, 12 Can. J. Women & Law 66 (2000).

<sup>101</sup> *Id.*

older survivors will be more able to access those funds, leaving Georgia survivors without a civil remedy unless they are under the age of 23 or, if abused on or after July 1, 2015, are within the 2-year delayed discovery SOL.

Finally, after extensive research, no evidence of negative impacts of civil lawsuits against small business or religious organizations, such as small unincorporated churches, was found. Given the absence of information, literature reviews, studies, or reports on the impact on small business and religious organizations, this report cannot conclude the existence or absence of any negative effects.

## **7. Conclusion**

Child sexual abuse is a public health crises that affects survivors, families, organizational communities, and the public at-large. Georgia's current statute of limitations for civil claims related to child sexual abuse and domestic minor sex trafficking are inadequate to provide access to civil remedies for the majority of survivors, who, on average, do not discover the effects of abuse or disclose the abuse until age 52.

Georgia is in the minority of states that have declined to allow civil lawsuits for survivors over the age of 30. Civil lawsuits have been found to be therapeutic for survivors of child sexual abuse and send the message to perpetrators and entities that society will not tolerate the abuse of children. While little to no evidence exists indicating negative effects on large or small organizations facing lawsuits, the therapeutic and financial benefits for survivors and society are significant. Often, civil lawsuits are the only means by which perpetrators are exposed, allowing the public to be warned about a perpetrator and to take preventative measures to protect children.



Finally, and importantly, civil lawsuits can transfer the costs associated with child sexual abuse from the survivor, families, and the general public to the actual perpetrators and the organizations that proliferated the abuse.