



TO: Senator Pete Lee, Chair, Senator Julie Gonzales, Vice Chair, and Honorable Members of the Senate Judiciary Committee

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

RE: SB21-088: Child Sexual Abuse Accountability Act

DATE: March 9, 2021

Dear Chair Lee, Vice Chair Gonzales and members of the Senate Judiciary Committee,

Thank you for allowing us, Professor Marci Hamilton of CHILD USA and Kathryn Robb of CHILD USAAdvocacy, to submit testimony regarding SB21-088, which will increase access to justice for victims of child sexual abuse and enhance protection for children in Colorado. If passed, this legislation will make Colorado a leader in the fight to protect children.

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

CHILD USA is the leading nonprofit think tank dedicated to the prevention of child abuse and neglect. It is also the leader in the field of SOL reform, and the only organization to track child sex abuse SOLs in every state, D.C., and the federal government.

Kathryn Robb is the Executive Director of CHILD USAAdvocacy, a 501(c)(4) advocacy organization dedicated to protecting children's civil liberties and keeping children safe from abuse and neglect. CHILD USAAdvocacy draws on the combined expertise of the nation's leading experts and child advocates, specifically its sister organization, CHILD USA. Kathryn is also a survivor of child sexual abuse.

We commend you and the Committee for taking up the Child Sexual Abuse Accountability Act (the "CSA Accountability Act"), SB21-088, which will add a statutory cause of action with no statute of limitation for victims of childhood sexual misconduct against perpetrators and youth-serving organizations responsible for the abuse. The Act will create a new right to relief for all victims in Colorado, and provide long-overdue justice to older victims of child sex abuse whose injuries were compounded by historically short statutes of limitations which extinguished their claims long before they were able to tell anyone they were abused. Further, as discussed in detail below, the retroactive elements of this Act are constitutional pursuant to the Colorado Constitution.




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

Statutes of limitations, or SOLs, are judicial housekeeping rules: they set the deadline for pressing criminal charges or filing a civil lawsuit. An SOL is an arbitrary and technical legal rule that has prevented victims from obtaining justice and naming their perpetrators publicly for fear of retaliation. There are untold numbers of hidden child predators in Colorado who are preying on one child after another because the existing SOLs provide that opportunity. By making the CSA Accountability Act retroactive, access to justice for past victims will be available; this will also greatly reduce the present danger to the children of Colorado.

There are three compelling public purposes served by child sexual abuse SOL reform:

- 1) SOL reform **identifies hidden child predators and the institutions** that allowed the abuse to the public so children will not be abused in the future;
- 2) It **shifts the cost of abuse** from the victims and society to those that caused it; and
- 3) It **educates the public** about the prevalence and harm from child sex abuse to prevent future abuse.

HOW STATUTE OF LIMITATIONS REFORM HELPS EVERYONE



Identifies previously unknown predators and institutions responsible

to the public, shielding other children from future abuse.



Shifts the cost of abuse

from the victims and society to the perpetrators and the institutions that enabled them.



Educates the public


about the prevalence and harm from child sex abuse so that families and the legal system can prevent abuse.


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CHILD USA

THE NATIONAL THINK TANK FOR CHILD PROTECTION

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of Limitations Research
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SOL reform for child sex abuse validates victims and shifts the immense cost of abuse from victims and the public to the perpetrators and enabling institutions, placing them on notice that the state no longer stands with them - but with their victims.

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

Yet, it is in society's interest to have sex abuse survivors identify hidden child predators to the public—whenever the survivor is ready. By allowing claims for past abuse to be brought to court, hidden predators are brought into the light and are prevented from further abusing more children. This is especially important because predators have many victims and abuse into their elderly years. As well as providing already-existing victims of abuse a path to justice, SOL reform protects society at large. Preventing further abuse only serves to help society—by reducing the costs of healthcare for victims, allowing more healthy people into the workforce, and increasing the ability of children to grow into healthy adults.

SOL reform also educates the public about the danger of child sexual abuse and how to prevent it. When predators and institutions are exposed, particularly high-profile ones like Larry Nassar, Jeffrey Epstein, the Boy Scouts of America, and the Catholic Church, the press and media industry publish investigations and documentaries that enlighten the public about the insidious ways child molesters operate to sexually assault children and the institutional failures that enabled their abuse (i.e. Netflix's *Jeffrey Epstein: Filthy Rich* and HBO's *At the Heart of Gold: Inside the USA Gymnastics Scandal*). By shedding light on the problem, parents and others are better able to identify abusers and responsible institutions and prevent further abuse. This knowledge helps to educate children to be aware of the signs of grooming and abusive behavior and create more social awareness to help keep kids safe, while also encouraging institutions to implement accountability and safe practices.

II. Delayed Disclosure Science Supports SOL Reform for Child Sex Abuse

There is a worldwide epidemic of child sex abuse, with at least **one in five girls and one in thirteen boys sexually assaulted before they turn 18**.¹ The trauma stemming from child sexual abuse is complex and individualized, and it impacts victims throughout their lifetimes. There is an overwhelming body of science exposing the ways in which the trauma of sexual abuse during childhood impacts memory formation and the repression of memories.² It is now settled that PTSD, memory deficits, and complete disassociation are common coping mechanisms for child victims.³

Trauma is only one of the barriers preventing children from disclosing abuse. “Among other barriers, children often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they have been abused, don't have an adult they can disclose their abuse to, don't have opportunities to disclose abuse, and aren't believed when they try to disclose.”⁴ Studies suggest that many victims, as much as 33%, never tell anyone they were abused.⁵ The disclosure of child sexual abuse is a process and not a discrete event in which a victim comes to terms with their abuse. Often this happens in the context of therapy; sometimes it is triggered many years after the abuse by an event the victim associates with the abuse; other times it happens gradually and over time as a victim recovers their memory.⁶

In fact, the **average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years-old.**⁷ Yet, until recently, many states blocked criminal charges and civil lawsuits well before age 52. By the time most victims were ready to come forward, the courthouse doors were locked, shutting victims out of justice.



It is a medical fact that victims of child sex abuse often need decades to come forward. They are traumatized from the abuse, incapable of processing what happened to them, feel shame or blame themselves, and are often dependent on the adults who perpetrated or caused the abuse. Short SOLs for child sex abuse play into the hands of the perpetrators and the institutions that cover up for them; they disable victims' voices and empowerment.

III. Colorado Should Join the National Trend Toward SOL Reform by Passing the Child Sexual Abuse Accountability Act

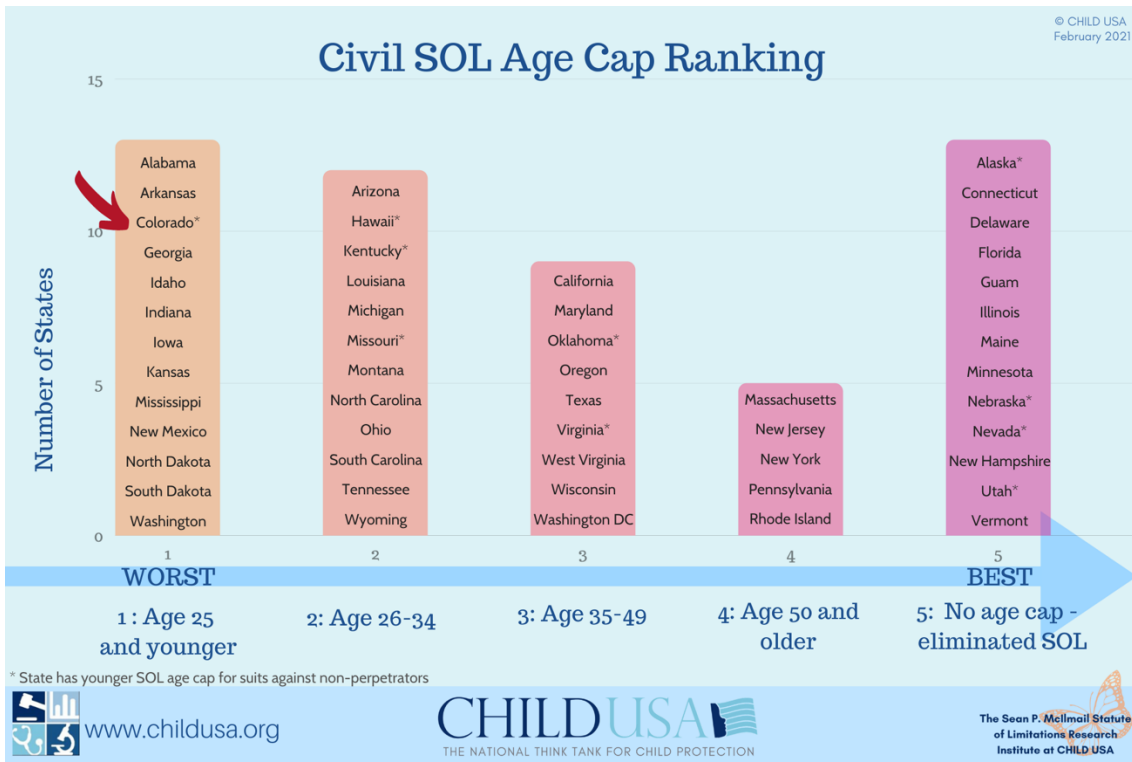
There is a national and global movement for SOL reform. The trend is toward elimination of civil and criminal SOLs and the revival of expired civil claims. For an analysis of the SOL reform movement since 2002, see CHILD USA's Report: History of US SOL Reform: 2002-2020.⁸ 2019 was a banner year for helping child sex abuse survivors access justice by changing the statutes of limitations. With the public more awake than they've ever been to the injustice survivors faced by being shut out of courts, there was a surge of SOL reform, with 23 states and Washington D.C changing their SOLs for the better in 2019.⁹ The powerful SOL reform wave rode its way into 2020, with 30 states introducing legislation, but the outbreak of Covid-19 slowed its momentum. Despite significant disruptions by Covid-19 in 2020, 8 states passed new and improved SOL laws for child sex abuse.¹⁰ By March of 2021, 29 states have already introduced SOL reform bills.¹¹

For claims against perpetrators, Colorado’s SOL expires when a victim reaches age 24 or 6 years after discovering their injuries were caused by the abuse. For claims against other individuals and institutions, Colorado’s SOL expires when victims reach age 20 for negligence and 21 for fraud, or 2-3 years after discovery. This means the civil SOL expires nearly *three decades* before the average victim will tell anyone they were abused. Colorado’s short SOLs have kept a broad class of victims from coming to court, while protecting the institutions that sheltered abusers and covered up the abuse.

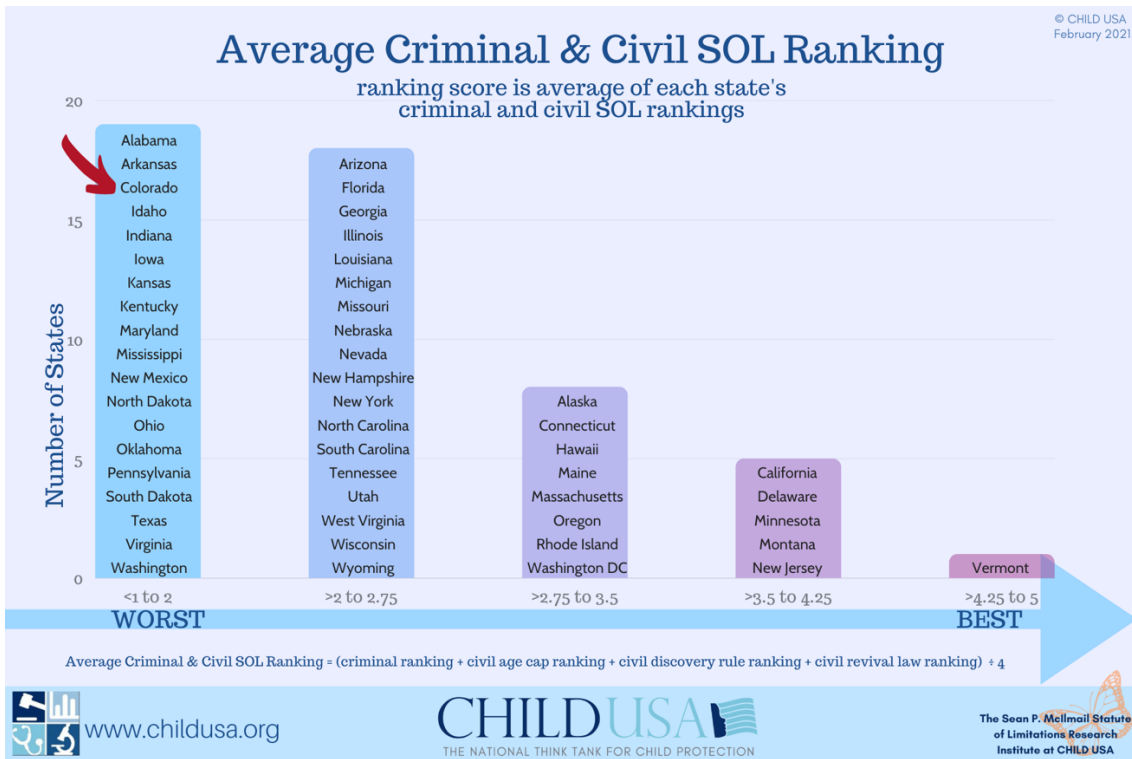
Institutional child sex abuse is a systemic problem occurring in athletic institutions, youth-serving organizations, religious groups, etc. Without institutional accountability for enabling child sex abuse to happen and by looking the other way or covering up abuse when it’s reported, the **children these institutions serve remain at risk today**. The CSA Accountability Act eliminates victims’ barrier to bring claims against entities for child sexual abuse. This sends a strong message to youth serving organizations in Colorado that the State will not tolerate “passing the trash” or looking the other way when a person is raping or molesting a child in their midst. This bill will incentivize youth serving organizations to implement prevention policies and take action immediately to report abuse in real time.

The proposed Act is more in line with the recent trend to eliminate civil SOLs and to give older victims more time to come forward in accordance with the delayed disclosure of abuse science.

The following graphic demonstrates how Colorado ranks amongst other states regarding its current age cap for civil child sex abuse claims. Overall, 12 states and Guam have eliminated civil SOLs for child sex abuse and they are ranked below as the best.¹² Another 5 states have extended civil SOLs past 50 years of age.¹³ Colorado ranks as one of the worst states because its SOL expires when victims are in their early 20’s. In 2021, Colorado stands alongside 12 other states seeking to eliminate their civil SOLs.¹⁴



The graphic below depicts CHILD USA’s average ranking of each state’s current criminal and civil SOLs (including age caps, discovery rules, and revival laws). Colorado currently ranks as one of the worst states for justice for child sex abuse victims.



IV. Colorado Taxpayers are Burdened by the Cost of Child Sexual Abuse and Colorado Will Gain Revenue from Medicaid Reimbursements for Settlement Funds and Damages Awards

a. Colorado Taxpayer Bear the Burden of the Overwhelming Cost of Child Sexual Abuse

Society pays a steep price when it blocks child sex abuse survivors from accessing justice. Historically, Colorado has protected institutions and perpetrators through short SOLs while the victims and the public have been left to bear the tremendous costs of the abuse. The negative effects of child sex abuse are profound, extensive, and long lasting. Studies show a strong correlation between adverse childhood experiences and negative effects across the lifespan, including, disrupted neurodevelopment; impaired social, emotional, and cognitive development; psychiatric and physical disease; and disability. Child sex abuse victims are predisposed to a greater incidence of depression, PTSD, substance abuse, alcoholism, and suicide, among many other health impacts. Because of the greater incidence of medical and psychological health problems and the negative impact on achievement and success, child sex abuse victims in Colorado are disproportionately in need of medical care and other government support as compared to the general population. The cost of the negative effects of sex abuse on the individual survivor over the course of their lifetime is high, and without access to justice, victims and their families are forced to bear those costs themselves.

The costs of sex abuse are staggering. Child sex abuse generates many costs that impact the nation's health care, education, criminal justice, and welfare systems, costing nearly \$2 trillion annually. Numerous, scholarly studies have concluded that the average cost of child maltreatment is approximately \$830,928.00 per victim. M. Merricka, et. al, *Unpacking the Impact of Adverse Childhood Experiences on Adult Mental Health*, CHILD ABUSE NEGL. (2017). It is unfair for the victims and taxpayers to be the only ones who bear this burden; the CSA Accountability Act levels the playing field by imposing liability on the ones who caused the abuse and alleviating the burdens on the victims and taxpayers.

b. Colorado Will Gain Revenue from Medicaid Reimbursements for Settlement Funds and Damages Awards

Due to the myriad of problems child sex abuse can generate, many victims land in precarious situations. While approximately 21% of Colorado's population is covered by Medicaid¹⁵, it is likely that sex abuse survivors disproportionately receive support due to the crippling effect of the trauma. Victims are often on Medicaid and need other state support including food and shelter assistance, addiction treatment, and job training or support. When survivors who rely on Medicaid for treatment of their health problems related to abuse are able to recover damages or reach a monetary settlement against those responsible for their abuse, Colorado gets reimbursed from those funds. See COLO. REV. STAT. ANN. § 25.5-4-301(4)-(6). The State is entitled to a portion of the settlement or award funds and benefits from an automatic "Medicaid lien" that is placed on the funds for the payments it made for the survivors' health problems caused by the abuse.¹⁶

Enactment of the retroactive portion of this bill alone will lead to reimbursement to Colorado's Medicaid Program for at least \$ 25,000,000.00¹⁷— when Medicaid liens are paid out of

settlements. In fact, the savings to the State are likely to be far greater over time. Without the CSA Accountability Act, the Medicaid funds will not be reimbursed. With the Act, Medicaid and Colorado taxpayers are reimbursed, as they should be.

This bill would result in millions of dollars in reimbursement of Medicaid funds previously paid to child sex abuse victims. It would also reduce the cost of abuse to the State in the future, because more victims would be able to recover money from those who caused their injuries rather than being relegated solely to the State for support when the ravages of child sex abuse affect their lives in the form of depression, PTSD, substance abuse, and other medical issues. This change will give the State more freedom in the future to serve other public needs.

V. A New Statutory Cause of Action for Child Sex Abuse That Applies Retroactively is Constitutional Under the Colorado Constitution

The Colorado Constitution permits the Legislature to enact the retroactive provisions of the CSA Accountability Act. The Constitution gives the Legislature the power to enact laws with retroactive effect that are supported by strong public interests—and this Act clearly is. Holding abusers and organizations accountable for child sex abuse is undoubtedly “in the best interest of the state’s public health and safety and is needed to address the long history of child sexual abuse that occurred within organizations that are culpable and complicit in the abuse.” *Senate Bill 21-088*. The Act creates a new alternative statutory right to relief for victims of child sexual abuse without reviving any common law or statutory cause of actions that may be time-barred. The Colorado Constitution does not grant child molesters or institutions that enable abuse any absolute right to tort immunity from civil lawsuits for injury that arises from the abuse. Any illusory right defendants may assert are eclipsed by Colorado’s compelling interest in protecting children from sexual predators and opening the doors to justice for child sex abuse victims in the State.

a. The CSA Accountability Act Does Not Unconstitutionally Impair Vested Rights or Create a New Obligation, Duty or Disability

The Colorado Constitution, Art. II, Sec. 11, provides: “No ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, . . . shall be passed by the general assembly.” The Colorado Supreme Court consistently utilizes *DeWitt’s* two-step inquiry in assessing whether a law the legislature intended would operate retroactively is unconstitutionally “retrospective” under the Colorado Constitution. For a statute to be “retrospective” it “either (1) impairs a vested right, or (2) creates a new obligation, imposes a new duty, or attaches a new disability[.]” *In re Estate of DeWitt*, 54 P.3d 849, 855 (Colo. 2002). The test for retrospective statutes before *DeWitt* focused on whether the statute was substantive or “effects a change that is only procedural or remedial in nature,” yet it ultimately hinged on whether it implicated vested rights. *Colorado Dep’t of Soc. Servs. v. Smith, Harst & Assocs., Inc.*, 803 P.2d 964, 966 (Colo. 1991) (quoting *Cont’l Title Co. v. Dist. Court In & For City & Cty. of Denver*, 645 P.2d 1310, 1315 (Colo. 1982)).

There is no bright-line test for determining what is and isn’t considered a vested right in Colorado. Courts look to the following considerations for determining “whether a vested right is implicated”: “(1) whether the public interest is advanced or retarded; (2) whether the statute gives effect to or defeats the bona fide intentions or reasonable expectations of the affected individuals; and (3)

whether the statute surprises individuals who have relied on a contrary law.” *DeWitt*, 54 P.3d at 855 (citing *Ficarra v. Dep’t of Regulatory Agencies*, 849 P.2d 6, 16 (Colo. 1993)). The CSA Accountability Act would further the profound public interest of protecting children from child sex abuse by allowing survivors to expose perpetrators and institutions that systemically cause abuse. It also serves the important public policy of making sure that those responsible for the devastating effects of child sex abuse are the ones who pay for the damage, rather than the victims and taxpayers. Moreover, there is no legitimate expectation for a child molester or someone responsible for the child sex abuse to claim that they raped a child under the expectation of a short statute of limitations. See *Chase Sec. Corp. v. Donaldson*, 325 U.S. at 316 (Selling unregistered stock was not “undertaken by appellant on the assumption that the old [SOL] would be continued.”). Further, a defense that the SOL for a particular common law or statutory cause of action has expired, is irrelevant to the new statutory cause of action this Act seeks to create. On balance, those responsible for sexually abusing a child would not and could not have a vested right in an SOL defense to claims brought pursuant to the Act.

Even if a statute of limitations defense could be construed to be a vested right, it would not be dispositive on the issue of unconstitutional retrospectivity. The Colorado Supreme Court has made clear that even a retroactive law that infringes on vested rights may be constitutional if the law is rationally related to a legitimate government interest. *DeWitt*, 54 P.3d at 855 (“[A] finding that a statute impairs a vested right, although significant, it is not dispositive as to retrospectivity; such a finding may be balanced against the public interest in the statute.”). A vested right will be balanced against “public health and safety concerns, the state’s police powers to regulate certain practices, as well as other public policy.” *City of Golden v. Parker*, 138 P.3d 285, 289–90 (Colo. 2006) (quoting *DeWitt*, 54 P.3d at 855). Giving older survivors of child sex abuse a new remedy for their injuries is unquestionably reasonable and undoubtedly serves the public interest. It remedies the longstanding injustice to victims of extinguishing their claims long before they were able to get to court and protects children from further abuse by hidden predators. This is why every appellate court across the nation to consider the rationality of a retroactive cause of action for child sexual abuse has found the remedial statutes to be reasonable.¹⁸

Colorado’s compelling interest in protecting its youth from sex abuse is already well-established in legislative enactments and judicial rulings.¹⁹ The Colorado Supreme Court recognized that the Legislature “has demonstrated an on-going commitment to afford minors significant safeguards from harm by passing numerous statutes designed to protect minor children.” *Cooper v. Aspen Skiing Co.*, 48 P.3d 1229, 1233 (Colo. 2002).²⁰ When the Legislature outlawed the production and possession of sexually exploitative materials depicting minors, it explicitly acknowledged Colorado’s compelling interest in protecting “the privacy, health, and emotional welfare of its children”. COLO. REV. STAT. § 18-6-403 (2015). Colorado courts also make clear that the “prevention of sexual exploitation and abuse of children constitutes a government objective of paramount importance.” *People v. Grady*, 126 P.3d 218, 221 (Colo. App. 2005). See also *People v. Maloy*, 465 P.3d 146, 158 (“[i]t is evident beyond the need for elaboration that a State’s interest in “safeguarding the physical and psychological well-being of a minor” is “compelling,” and that the ‘prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.’”) ((quoting *New York v. Ferber*, 458 U.S. 747, 756-57 (1982)) ((quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982))); *Watso v. Colorado Dep’t of Soc. Servs.*, 841 P.2d 299, 308 (Colo. 1992) (“the state has a substantial interest in ensuring that children are not subject to abuse or neglect”); *People v. Madril*, 746 P.2d 1329,

1334 (Colo. 1987) (state has “legitimate interest in protecting children against sexual abuse by persons who . . . assume varying duties of care and responsibility toward the child”). “There is also no doubt that[] “[t]he sexual abuse of a child is a most serious crime and an act repugnant to the moral instincts of a decent people.”” *Packingham v. North Carolina*, 137 S. Ct. 1730, 1736 (2017) (citing *Ashcroft*, 535 U.S. at 244).

The next consideration in determining retrospectivity is whether it would impose a new obligation, new duty, or new disability to past transactions or considerations. *DeWitt*, 54 P. at 855. Sexually abusing children has long been a crime and actionable civilly pursuant to common law torts. Perpetrators have always had an obligation not to rape and molest children, and institutions have a duty to protect the children in their care from abuse. *See Hickman v. Catholic Health Initiatives*, 328 P.3d 266, 272–75 (“Abrogating the hospital’s immunity from damages did not create a new duty or obligation because, under the former statute, the hospital had a duty of care in credentialing medical professionals.”); *Colorado Dep’t of Soc. Servs.*, 803 P.2d at 966–67 (giving remedy to state for overpayment doesn’t create new duty for nursing homes because they have always had a fiduciary duty to maintain patient’s accounts in trust and failure to do so could result in criminal penalties). A statutory cause of action would not impose a new duty or obligation because it does not change the standard applicable to child sex abuse when the crime was committed; it has always been illegal.

Similarly, the CSA Accountability Act also would not impose a new disability. There is no new disability because defendants would not be prohibited from doing something they were previously permitted to do; they never had a right to sexually abuse children or cover up the abuse. Even if the Act did impose a new disability, the disability must be of “constitutional magnitude” for the court to find it retrospective. *DeWitt*, 54 P.3d at 857. Courts have found that no disability of constitutional magnitude existed when the Legislature shifted its policy in an arena that it typically regulates because defendants should expect shifts over time in regulated industries. *See DeWitt*, 54 P.3d at 857 (insurance and probate); *Hickman*, 328 P.3d at 273 (healthcare). Statutes of limitations for torts are “traditional legislative power[s]” that are “inherently the province of the legislature.” *DC Auto., Inc. v. Kia Motors Am., Inc.*, 411 F. Supp. 3d 1137, 1146 (D. Colo. 2019) (citations omitted). Tort reform is heavily regulated by the Legislature and a policy shift increasing liability for tortfeasors could be anticipated and any ensuing disabilities are not of “constitutional magnitude.” Therefore, the statutory cause of action would not retroactively impose a new duty, obligation, or disability on a defendant relating to their already criminal or tortious conduct.

b. Any Reliance on the Antiquated *Jefferson County* Case is Misplaced

Opponents in Colorado may attempt to scare legislators and decision makers by citing to a case from nearly 40 years ago that is not applicable to a new statutory cause of action for child sex abuse and which may have been overruled by a standard in a subsequent case. *Jefferson County Dep’t of Social Services v. G*, 607 P.2d 1004 (Colo. 1980). In *Jefferson*, the Court held that a paternity action by the State that was time-barred by the prior paternity statute, which was later repealed, could not be constitutionally revived by a new paternity statute. While the limited holding in *Jefferson* may still stand, its outdated approach to vested rights and retrospectivity has been superseded by subsequent Colorado Supreme Court decisions. Further, because the CSA Accountability Act is not a revival law, *Jefferson* is irrelevant.

The *Jefferson* case had a completely different type of statute at issue with a set of constitutional problems unique to that law which are not present in this retroactive cause of action for child sex abuse. *Jefferson* involved a very specific circumstance where a law both created a right but limited it at the same time. The paternity statute at issue gave the State the right to seek paternity but only for a limited amount of time. In contrast, a new statutory cause of action stands alone and separate from any existing causes of action or any time limits; the common law provides that a person who is sexually abused has a right to bring a civil claim for battery and a claim for negligence if an institution was responsible for the abuse. And importantly here, there is no constitutional problem with implementing a different statute of limitations for a new cause of action that exists separate and apart from any other statutory or common law time limits. The statute at issue in *Jefferson* was also radically different factually from the Act proposed. The new paternity statute repealed the previous statute and adopted a new SOL without explicit language regarding retroactivity. The Court cited no legislative intent or policy considerations for why revival of the paternity action by the State should be permitted under the new statute. Whereas the CSA Accountability Act is supported by an extensive legislative declaration identifying widespread incidence of child sex abuse, the long-term injuries victims suffer and the strong public health and safety policies in favor of giving survivors of child sex abuse the opportunity to pursue justice. Unlike in *Jefferson*, the Legislature is clear here about its intent to establish a civil cause of action that allows survivors to seek justice whenever they are ready—and explicitly includes older survivors whose claims expired before they disclosed that they were abused, and well before they were ready to come to court.

Due process and retrospectivity at the state level has been a time evolving doctrine, with states moving away from an antiquated vested rights approach to statutes of limitations defenses and deferring to legislative judgment instead for revival of previously expired claims. *See Landgraf*, 511 U.S. at 272. The standard of review for retroactive statutes has been changed in the 40 years since the *Jefferson* decision. Since *DeWitt* in 2002, the Colorado Supreme Court has used a completely different test to evaluate the constitutionality of a retroactive statute. *DeWitt*, 54 P.3d 849.

The *Jefferson* Court espoused no test for determining whether a right is vested. It cited to dicta in old cases supporting a defendant's vested right to an SOL defense and held the legislature could not constitutionally revive the paternity action which had been barred by the prior SOL.²¹ In contrast, the *DeWitt* Court acknowledges “[t]here is no bright-line test” for vested rights and the determination of whether a right is vested requires balancing of the public interest, reasonable expectations, and reliance on the old law. *DeWitt*, 54 P.3d at 855. The new test for vested rights is flexible and takes into account the public policy interests achieved by the statute. The *Jefferson* Court undertook no such vested rights review, and therefore, its finding that the paternity action could not be constitutionally revived should have no bearing on whether perpetrators who sexually abused children and those who enabled them have vested rights in an SOL defense for a different cause of action. That particular vested rights determination would be subject to the public policy, reasonable expectations and unfair surprise considerations in *DeWitt*.

Further, the current Colorado Supreme Court approach to vested rights makes clear that they are not absolute. *Jefferson* relied on a decision from 1878 for its determination that vested rights in that case were absolute and could not be impaired by subsequent legislation. The *Jefferson* Court explained, “[t]his provision against retrospective laws has been interpreted to mean ‘every statute

which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability to transactions or considerations already past, must be deemed retrospective.” *Jefferson*, 199 Colo. 315, 318 (quoting *Denver, etc., Ry., Co. v. Woodward*, 4 Colo. 162, 167 (1878)). However, in 2002 the Colorado Supreme Court made clear in *DeWitt* and its progeny that vested rights are no longer absolute and “can be balanced against the public interest in the statute.” *DeWitt*, 54 P.3d at 855 (“[A] finding that a statute impairs a vested right, although significant, it is not dispositive as to retrospectivity.”). Therefore, even if defendants assert some sort of absolute rights against liability for the child sex abuse they perpetrated or enabled, the constitutionality inquiry would not end there as the Supreme Court now allows even vested rights to be infringed upon by the legislature for the benefit of public safety.

VI. Conclusion

Once again, we commend you for supporting this legislation, which is desperately needed to help survivors of childhood sexual abuse, and for taking up the cause of child sex abuse victims. Colorado’s children deserve SOL reform to protect them today and into the future. Establishing a new civil cause of action that allows victims of child sexual abuse to file suit for their injuries whenever they are is a positive step for Colorado’s children and families. Please do not hesitate to contact us if you have questions regarding SOL reform or if we can be of assistance in any way on other child protection issues.

Sincerely,



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¹ G. Moody, et. al., *Establishing the international prevalence of self-reported child maltreatment: a systematic review by maltreatment type and gender*, 18(1164) BMC PUBLIC HEALTH (2018) (finding a 20.4% prevalence rate of child sexual abuse among North American girls); M. Stoltenborgh, et. al., *A Global Perspective on Child Sexual Abuse: Meta-Analysis of Prevalence Around the World*, 16(2) CHILD MALTREATMENT 79 (2011) (finding a 20.1% prevalence rate of child sexual abuse among North American girls); N. Pereda, et. al., *The prevalence of child sexual abuse in community and student samples: A meta-analysis*, 29 CLINICAL PSYCH. REV. 328, 334 (2009) (finding a 7.5% and 25.3% prevalence rate of child sexual abuse among North American boys and girls respectively).

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

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

⁴ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>. (citing N. Spröber et. al., *Child sexual abuse in religiously affiliated and secular institutions*, 14 BMC PUB. HEALTH 282, 282 (2014).

⁵ *Id.*

⁶ Hoskell, at 24.

⁷ CHILD USA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse*, CHILDUSA.ORG, 3 (Mar. 2020) available at <https://childusa.org/wpcontent/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

⁸ CHILD USA, *History of US SOL Reform: 2002-2020*, CHILDUSA.ORG (last visited March 8, 2021), available at www.childusa.org/sol-report-2020.

⁹ For more information on SOL reform in 2019, visit *2019 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 22, 2021), available at www.childusa.org/2019sol.

¹⁰ See *2020 SOL Tracker*, CHILDUSA.ORG (last visited Jan. 30, 2021), available at www.childusa.org/2020sol.

¹¹ *Id.*

¹² AK, CT, DE, FL, IL, ME, MN, NE, NV, NH, UT, and VT. For information on civil SOL elimination, see *2021 SOL Tracker*, CHILDUSA.ORG (last visited March 8, 2021), available at www.childusa.org/2021sol.

¹³ MA, NJ, NY, PA, & RI.

¹⁴ CT, FL, IN, IA, KS, MD, MA, MN, NJ, NY, OK & SD. See *2021 SOL Tracker*, CHILDUSA.ORG (last visited March 8, 2021), available at www.childusa.org/2021sol.

¹⁵ Colorado Department of Health Care Policy & Financing, *Statewide Fact Sheet*, available at https://www.colorado.gov/pacific/sites/default/files/State%20of%20Colorado%20Fact%20Sheet%20FY20_0.pdf

¹⁶ See also Colorado Department of Health Care Policy & Financing, *Tort and Casualty* at <https://www.colorado.gov/pacific/hcpf/tort-and-casualty>.

¹⁷ Assume that approximately 200 victims take advantage of the retroactive provision over the next few years and that on average they will receive \$ 250,000 in settlement, which is below the national average of approximately \$350,000. Medicaid often accounts for roughly 50% of the settlement. $200 \times (\$250,000/2) = \$25,000,000$.

¹⁸ Hartford Roman Catholic Diocesan Corp., 119 A.3d at 496 (rejecting challenge because revival law “is a rational response by the legislature to the exceptional circumstances and potential for injustice faced by adults who fell victim to sexual abuse as a child” and the “revival of child sexual abuse victims' previously time barred claims serves a legitimate public interest and accomplishes that purpose in a reasonable way”); Slaney, 41 N.E.3d at 741 (rejecting challenge because the revival statute was reasonable and “tied directly to the compelling legislative purpose” of giving access to justice for child sex abuse survivors who do not process their injuries well into adulthood); Cosgriffe, 864 P.2d at 779–80 (rejecting challenge because the discovery statute “has a reasonable

relation to the legitimate purpose of the State”); Hoffman, 452 N.W.2d at 514 (rejecting challenge because “the statute has a reasonable relation to the state's legitimate purpose of affording sexual abuse victims a remedy”).

¹⁹ Ashcroft v. Free Speech Coal, 535 U.S. 234, 263 (2002) (O’Connor, J., concurring) (“The Court has long recognized that the Government has a compelling interest in protecting our Nation’s children.”); Maryland v. Craig, 497 U.S. 836, 837 (1990) (“States have a compelling interest in protecting minor victims of sex crimes from further trauma”); Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607 (1982) (It is clear that a state’s interest in “safeguarding the physical and psychological well-being of a minor” is “compelling.”); New York v. Ferber, 458 U.S. 747, 756- 57 (1982) (“*First*. It is evident beyond the need for elaboration that a State’s interest in ‘safeguarding the physical and psychological well-being of a minor’ is compelling.”) (quoting Globe Newspaper Co., 457 U.S. at 607); Ginsberg v. New York, 390 U.S. 629, 640 (1968) (“The well-being of children is of course a subject within the State’s constitutional power to regulate”).

²⁰ Citing, C.R.S. § 18–3–412 (2001) (possibility for increased criminal penalties for habitual sex offenders against children); C.R.S. § 17–22.5–405(5)(b) (possibility for increased criminal penalties for certain violent crimes committed against a minor); C.R.S. § 26–6–101 to 307 (2001) (comprehensive regulations in the Child Care Licensing Act).

²¹ Jefferson County Dep’t of Social Services v. G, 607 P.2d 1004 (Colo. 1980) (“Where a statute of limitations has run and the bar attached, ‘the right to plead it as a defense is a vested right which cannot be taken away or impaired by subsequent legislation.’ Willoughby v. George, 5 Colo. 80, 82 (1879). See also Fischer v. Kuiper, 187 Colo. 221, 529 P.2d 641 (1974); People in Interest of L. B., 179 Colo. 11, 498 P.2d 1157 (1972); and Dietemann v. People, 76 Colo. 378, 232 P. 676 (1924). When the bar of the statute of limitations has once attached, the legislature cannot revive the action. Edelstein v. Carlile, 33 Colo. 54, 78 P. 680 (1904).”).




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1144 Sherman St., Denver, CO 80203 

Mr. Chair and members of the Senate Judiciary Committee,

I am submitting this written testimony to you on behalf of the Colorado Municipal League and our 270 municipal members.

First, the League agrees with the intent and premise of SB21-088, that individuals who are convicted of these crimes, and entities who are convicted of negligence by willfully ignoring their responsibilities to children in their care deserve to be answerable for their crimes.

Our only concerns with the bill is in the fact that the bill places this new form of liability for local governments outside the scope of the Colorado Governmental Immunity Act (CGIA). The CGIA is an established body of law which local governments look to for familiar and consistent procedures for adjudicating all other negligence claims levied against them. The CGIA does not mean that local governments are not answerable if found negligent in a court of law. We can, and have been sued for damages associated with negligence and other torts.

The CGIA exists because the general assembly recognized that state and local governments are not the same as private businesses. We provide essential services to millions of people throughout Colorado, and our organizations function through the collection of tax money collected from our citizens. While CGIA does not protect local governments from being held accountable for negligent behavior, it does protect state and local governments from being sued out of existence, because the negative consequences of that would inevitably fall to our taxpayers.

CML and other local government stakeholders respectfully ask that the sponsors of SB21-088, and the members of the Senate Judiciary Committee, please consider including amendment language which would create a waiver of governmental immunity for negligence related to employees who commit sex crimes.

Sincerely,

Heather Stauffer

Legislative and Policy Advocate
Colorado Municipal League
1144 Sherman Street
Denver, CO 80203
(303) 831-6411

For more information contact Heather Stauffer at 303-831-6411 or hstauffer@cml.org

TESTIMONY IN SUPPORT OF SB 21-088 by Beverly Bizup Hawkins

My name is Beverly, and Bobby Bizup was my first cousin. Bobby was my father's older brother's son. Our family still misses Bobby and our reflection upon his death is still very painful, but how his death came to be is even more disturbing.

I don't even know where to begin except to start with a story. A few years ago I hand built a small house that is handicap accessible for my husband who has Parkinson's. One kitchen and recreation room downstairs and a second small room up a spiral staircase. The whole house has only 7 windows, one of which is in the room reached by the spiral stair.

Since that window is over 72 inches off the ground, by code, it had to be 36 inches off the floor, even in a small house designed for an elderly couple who would never be able to crawl out of a window that high off the floor in the case of fire.

Code used to be 27 inches but since a child in Michigan fell out of a second floor window, the code was changed from 27 to 36 inches in order to protect children from accidental fall. That law was made as a result of one child, in one state, in one country, on one occasion, and is now the international standard.

When a child's life is lost from an accident, it is very hard to accept, but not hard to explain, because the cause of death was an accident. In most accidental cases children are usually in an environment of trusted adults and caring people who have the capacity to feel the pain of loss and to share in remorse.

When children "trust" adults such as parents, teachers, doctors and clergy, they respect and listen to them. They do what they are told to do without question. They trust that they are safe and will not be misguided by a mentor. If something goes wrong, they blame themselves because they listened to the adult and did what they were told to do.

When a child dies because they were purposely misled while under the care of those whom they trust, it is beyond explainable and deeply tragic. When a trusted adult with proclivities for sexual exploitation lures in and uses a child as an object of their own pleasure, they are thieves, savages and certainly not acting as a human being. My cousin, Bobby Bizup died because he trusted adults who were supposed to be protecting him and preventing harm to him while at a summer camp. The camp counselors were his supervisors.

Breaking trust is both harmful physical and emotionally to any one of us. Breaking the trust of a child by a mentor or professional is devastating to their developing personhood. While Bobby's death happened over a year or more in a timeline, the other camp attendees whose pain did not end as Bobby's did, feel the torture lasting their lifetime. Some chose to voluntarily take their own life, while others fight the mental devastation everyday knowing that their personhood was stolen, only to be replaced with chronic anguish and shame.

There are far more children harmed by sexual predators than those who fall prey to accidental death. Even the number of children lost to childhood cancer pales to the number of those who become a target of the sex addicted adult. They are victims of a very purposeful and devious kind of violence and their pain is insidiously hidden. Shame, guilt, and mental anguish is the ball and chain they carry for a lifetime. Please pass the pending legislation that will foster the prevention of child abuse from sexual predators.

Respectfully submitted,
Beverly Bizup Hawkins, R.D.H., M.A. 2318 Manning Street
Philadelphia, Pennsylvania 19103 cell/text 610-420-8564

Former member:
Consumer Protection Board of the Commonwealth of Pennsylvania, Pennsylvania State Board of Dentistry

Jacquelyn Aamodt

jaamodt@thebluebench.org

Good afternoon Mister Chair and Members of the Committee. My name is Jacquelyn Aamodt, and I am The Director of Client Services at The Blue Bench: Metro Denver's sexual assault prevention and care center. I am here today representing The Blue Bench in support of SB 21-088.

As a longtime member of CCASA's policy committee, I have been involved in previous efforts to hold institutions accountable for the sexual abuse of children in their care here in Colorado.

In my eight (8) years at The Blue Bench I have been supervising both therapists and victim advocates who have worked directly with thousands of survivors as they navigate through the medical, legal and mental health systems. Throughout this time, I have also had direct contact with survivors, providing them with support and information through their process.

As a result of the societal, interpersonal and neurobiological effects of trauma, for many the impact of sexual assault has caused them great confusion (memory impacted, self-blame), isolation (difficulty trusting or connecting with others) and often paralysis (fear, debilitating symptoms). This can often lead to difficulty maintaining employment, getting basic needs met, as well as reaching out and/or reporting their sexual assault. It may take them years before they are able to do so.

Knowing that the "average lifetime cost for victims {is} \$282,734 per female child sexual abuse victim and \$122,461 per adult rape victim," many survivors consequently may lack the resources for necessary medical and/or mental health treatment. Why should survivors endure extra suffering, both mental and financial, while the institutions who covered-up their abuse experience no consequences?

Knowing that "99.5% of perpetrators will never spend a day in prison for their crime," many survivors cannot obtain justice through the criminal justice system; the civil legal system is often their only path of recourse. Consequently, this results in public safety issues, as not only are those doing harm not being held accountable, but institutions aren't incentivized to address issues of sexual abuse happening in their organizations so the cycle of harm and trauma continues.

Holding institutions accountable for the distinct harm of covering-up sexual abuse gives survivors the opportunity to address the specific harm of sexual abuse cover-up. The civil legal system can provide victims with the monetary resources necessary to rebuild their lives. Holding institutions accountable for the sexual abuse of children in their care sends a message that sexual assault will not be tolerated. It will ultimately serve the state's overall public safety interests as we can all agree that it's unacceptable for children to be sexually abused – especially in places where they are supposed to be safe.

For these reasons, I support SB 21-088 and urge a "yes" vote from the committee. Thank you for your time this afternoon, I am open to any questions the committee may have.

JEB BARRETT TESTIMONY on SB 21-088

Good afternoon Senator Lee. My name is Jeb Barrett. a victim-survivor of serial sexual assault as a minor, a retired therapist and Denver Leader of SNAP. I am here today representing both the Survivors Network and myself in support of SB 21-88 concerning child sexual abuse accountability.

I have advocated for SOL reform for sexual assault of minors and accountability by institutions that enable this abuse since moving to Colorado in 2005.

I was violated by a teenage uncle from age 8 to 11, then by scoutmaster, a music teacher and a priest. I thought there was something about me that invited these assaults, and I learned to disassociate, burying outright terror from these betrayals for decades. None of these assaults were reported until I found personal power to do so, one at a time. Meanwhile, I suffered in shame and silence for fear of being blamed or not believed.

I was a loner in high school and treated for anxiety. At 18, I attempted suicide, but soon found alcohol to numb my feelings. At 39, I hit bottom, sought help for my drinking and was diagnosed as bipolar. I was later diagnosed with ADHD and PTSD. At 42½ years of sobriety I know that had I not found understanding and help, I would not be here today.

After my partner committed suicide in 1984, I earned a second master's degree and became a licensed professional counselor. Norman was groomed and abused by a Catholic priest in Montana from age 14 to 26. We know today that addictions, other self-destructive behaviors and suicide are all too common among trauma victims.

I didn't talk about my own abuse until I attended my fourth SNAP meeting at age 63, but as a therapist I was aware of the lasting impact of childhood molestation by priests, other men and women.

Healing is a continuing process of coming to terms with the neurological, developmental and physical problems resulting from trauma in the formative years. At 81, I still deal with ADHD, PTSD, anxiety, hypervigilance, etc. I also have a pacemaker and chronic kidney disease. On the positive side, I have survived to tell my story to help prevent what happened to me from happening to others, to be a voice for the voiceless.

Just as I will never know what it is like to grow up without being sexually violated, those who have not experienced such betrayal will never know what we live with. It never goes away.

In passing SB 21-88, adult survivors of childhood sexual assault may finally gain access to the civil justice system in Colorado as in other states, while also exposing predators and institutions who protect them rather than children. It is our hope that more survivors will find healing from the crippling trauma they still suffer.

All institutions with access to the most vulnerable need to be held accountable, the Boy Scouts, Girl Scouts, schools, churches, sports organizations and others.

For these reasons, I support SB 21-088 and urge a “yes’ vote from this committee. Thank you for your time. I am open to any questions you may have.

James E. "Jeb" Barrett, *Victim-Survivor of Childhood Sexual Assault*

Denver SNAP Director

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www.snapnetwork.org

Protect the vulnerable. Heal the wounded. Prevent abuse.



You only share your shame with those who have earned your trust.

NOTE: The national cost of treatment, institutionalization and addiction is beyond imagining. The effects of childhood trauma upon early brain development is the underlying cause of most mental health and addiction problems. These costs can effectively be reduced by early intervention, prevention programs and legislative support.

Memorandum

March 11, 2021

To: Senate Finance Committee, Colorado General Assembly

From: Professor Richard Collins

Re: SB 21-088

This memo is written in advance of my testimony to the committee to summarize what I plan to say orally. I appear at the request and on behalf of the Colorado Catholic Conference. I am stating a legal opinion on the issues outlined below. I take no opinion on the policies addressed by the bill.

My opinion is based on research on and publication of articles and a book on the Colorado Constitution and more than twenty years teaching courses on it.

The bill defines liability for sexual misconduct that applies both prospectively and retroactively. My testimony concerns only retroactive applications. Existing statutes of limitations allow applications to events within six years past, which can be extended in cases of a victim's disability. My testimony addresses retroactive applications to events not within six years past as extended by disabilities.

Article II Section 11 and Article XV Section 12 of the Colorado Constitution forbid "retrospective" civil laws. The Colorado Supreme Court defines such laws as those that retroactively impair vested rights or impose new obligations on past actions. The memorandum to the committee by the Office of Legislative Legal Services, dated January 13, 2020, stated that a proposal like SB 21-088 applied retroactively would violate Section 11 as interpreted in the Colorado Supreme Court's precedents. I fully agree with that conclusion. The bill states that it creates a new cause of action. This makes no difference because the conduct at issue is the same as covered by causes of action existing in the past. It would impose new obligations on past actions.

Article II Section 11 also forbids ex post facto laws in common with U. S. Constitution Article I Section 10. These provisions ban retroactive laws imposing punishment. SB 21-088's retroactive imposition of treble damages on some conduct violates these provisions.

Good afternoon, Madam Chair and Members of the Committee. My name is Patricia Eagle and I'm here representing myself in support of Senate Bill eighty-eight in favor of holding institutions accountable for childhood sexual abuse.

Personally, I'm a survivor of sexual abuse by a relative but I know firsthand the long-lasting impacts childhood sexual abuse can have and want all survivors have a path to justice.

From the ages of four to thirteen, my father encouraged me to masturbate with him, then ignored me. These were the only times he said he loved me. Love, sex and rejection soon blended together in my mind. My mother called what my dad and I did together "being mean" and blamed me.

In efforts to survive and appear normal, as I grew older I pushed aside these memories. But the consequences of the abuse were debilitating. At 15, I considered talking to my favorite teacher, but was afraid she would think I was a "filthy slut" and "whore," the very names my father called me.

It is not uncommon for survivors of sexual abuse to become promiscuous. I moved from one unhealthy relationship to another, from one job to the next, equating sex with love and looking for ways to numb to the chaos of my world by experimenting carelessly with drugs.

I married and divorced twice, and had debilitating migraines that incapacitated me. When migraines and memories pushed me to the brink of suicide, I wrote my parents saying I remembered my child sexual abuse. They called me crazy. We soon lost touch.

In the 80s, it was hard to find a counselor experienced in child sexual abuse. I've had at least seven different therapists off and on since I was 30. Talking to friends, mentors and an understanding spouse has been vital. A carefully prescribed

regimen of medications helps me maintain balance and feel stronger when memories catapult me into overwhelming shame and regret.

I've spent *tens* of thousands of dollars to learn that it's impossible to change what I refuse to talk about. I wrote a book and now talk to groups about healing from sexual abuse. I've learned that when survivors willingly let their guards down and let you see and hear who they really are, *this* is what effects societal change.

All survivors of childhood sexual abuse deserve to have a path to healing and justice and we owe it to them to make sure that we are incentivizing institutions to protect children.

Please, vote yes on Senate Bill eight-eight. Thank you for listening and I am open to any questions the committee might have.



March 11, 2021

Dear members of the Senate Judiciary Committee:

I write on behalf of Colorado Nonprofit Association to express our support for SB 21-088. Our membership consists of over 1,400 nonprofit organizations statewide. Our mission is to lead, serve, and strengthen Colorado's nonprofit community to improve the quality of life throughout our state.

We support this legislation because protecting the safety and well-being of children is and should be a core value of Colorado's public policies. Adults who survived sexual assault and misconduct as children are often emotionally and psychologically scarred for life. Even though it can take many years for adult survivors to be ready and able to speak up, the statute of limitations keeps many from doing so.

If Colorado law is changed to only lift the statute of limitations prospectively, then many adult survivors still would be unable to file civil actions because the statute of limitations has already tolled. SB 21-088 proposes a new path under the law for these survivors to seek justice.

We recognize that passage of this law means that some nonprofits that serve youth will be held liable for sexual misconduct that happened under their purview. We believe SB 21-088 is targeted appropriately to hold nonprofits accountable if only they reasonably knew, or should have known, about sexual misconduct and failed to act reasonably to address the situation. Nonprofits with either no reason to know of past misconduct or who took steps to reasonably address the situation would not be liable.

This is the right policy because we've seen too many Coloradans hurt by sexual misconduct. It's time for our state and our institutions to do more to help.

We thank the sponsors for bringing this bill and ask you to vote yes. Contact me with any questions.

A handwritten signature in blue ink that reads "Mark Turner".

Mark Turner, Senior Director of Public Policy
(303) 813-4203, mturner@coloradononprofits.org

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Written Testimony for Susan Leighnor, M.A. – March 11, 2021
SB 21-088 Child Sexual Abuse Accountability Act

Good afternoon Chairman Senator Lee and Committee Members:

Thank you for having this hearing today for the Child Sexual Abuse Accountability Act.

More importantly, thank you for considering my testimony about my childhood sexual abuse.

My name is Susan Leighnor. Colorado has been my home for 38 years. I was born in Hutchinson, Kansas into a catholic family. My family attended Church of the Holy Cross. I attended Holy Cross Catholic School for first grade, fourth grade and CCD classes.

This is a photo of me in 1966 when I was 10 years old and in 4th grade.



Mass was always held in the morning before the school day began. After mass we would go back into the classrooms. One day after mass when I was 10 years old and in fourth grade, a boy came to our classroom and told my teacher, who was a nun, that I needed to go see Father, Monsignor Irvin F. Lampe. It was always an older boy who came to the classroom. He could have been an altar boy. I was led into the sacristy that was to the right of the altar where Monsignor Lampe was waiting for me. The boy went back out into the church and sat in a pew just outside the sacristy. As I stepped into the sacristy, Lampe was removing the white top he had worn during mass. He then sat down and pulled me close to him. He began talking to me about my parents getting a divorce. Lampe would go on to rape me.

After raping me, he held my hands and looked me in the face and told me that I was not going to talk about this. He told me this was like confession. We don't talk about what happens in confession so you are not going to talk about this. And if you do, you will go to hell.

I understood clearly that I could go to hell if I spoke about what had happened.

At some point, Lampe also told me that he was like God here on earth. If I was talking to him, I was, in fact, talking to God. This concept of a priest being God was not new to me. I learned

throughout my catholic schooling that the priest was like God. I heard this many times from the nuns when I was in school.

I still remember the priest telling me to go back to class. So I walked back to my classroom, trying to straighten out my underpants as I walked down the hallway. I was confused, angry and unsure what had happened. I am sure I cried walking back to class. By the time I got back to class, I would have stuffed my tears because the nuns hated it when a child cried.

I was raped at least three times by Lampe. I know this because the first time I walked directly back to class. The second time, I decided to go into the restroom and straighten myself out. Another time, I stayed too long in the restroom and my teacher came looking for me. I had lost track of time. I remember standing at the sink, washing my hands, and the nun standing behind me talking, blah, blah, blah ...

One time when the boy came to class to get me, instead of walking out the door, I summoned the courage to walk up to the teacher's desk and tell her quietly that I did not want to go see Father. The nun looked at me and told me I had to go see Father. I told her again I did not want to go see Father. And again, she told me I had to go. As I walked out the door, I stopped and looked back over my shoulder at the teacher, hoping she would tell me not to go, but instead she told me I had to go, so I did.

The pattern was the same; the boy would come get me out of class and take me to the sacristy. The boy would sit in the pew. Lampe would shut the door.

I remember touching his penis.

One time, I struggled to get away from Lampe, but a 10 year old little girl is no match to a grown man.

Afterwards, I walked past the boy in the pew and returned to class.

Imagine, I was expected to continue learning for the rest of the day after being raped in the sacristy.

I was not the only child who was called to see the priest. I saw others get called to see him.

I never spoke about what happened to me to my parents, or anyone. Out of pure fear, I did not want to go to hell. This fear of going to hell was reinforced in me when a classmate, a little girl, was injured on the playground and died a day later. I remember thinking that I could die on the playground. And if I died on the playground, I did not want to go to hell.

You see, the concept of hell being a burning inferno with people screaming out in agony was real for me, and I certainly did not want to ever go to hell.

As the school year went on, Lampe was gone, or at least he was not at the school.

Towards the end of fourth grade, after mass, someone came to the classroom and told my teacher that Father wanted to see me. So I went to the sacristy. This time, Father Francis Cox was there. (He had said the morning mass before school.) As Cox sat in the chair, he called me over to come near him. He held out his arm and wrapped it around me. Cox told me he wanted to introduce me to the new priest who was going to take over when Father Lampe left. He motioned for me to sit on the bench to his left which I did. After I sat down, I noticed another priest across the room. Cox then introduced me to Father William Wheeler. After introducing me, Cox walked out of the room. I watched him leave and I was scared to death. I knew Cox but I did not know this new priest. Within a minute or two of meeting Wheeler, he was raping me.

There was no grooming involved with Wheeler. It was a full-on attack within a minute or two. The next thing I remember is Wheeler sitting close to me on my left side talking, blah blah, blah ... I was terrified.

As I had done in the past, I went back to class...to learn...

A day or two later, as I was walking down the hall for recess, I was officially introduced to Wheeler by the principal. He was standing slightly behind her as she was talking. He gave me a stone-cold look that went right through me, as if to say, I will kill you if you say anything about meeting me before. I never said a word about meeting Wheeler or being raped.

I went to public schools after fourth grade.

I attended CCD class at Holy Cross when I was 12 years old. CCD was on Wednesdays after school. Early in the semester, after CCD class started, my teacher told me that Father wanted to see me. She said I was to go over to the rectory to see him. I had no choice, so I walked over and met with Wheeler. I was raped again by Wheeler. Afterwards, I walked back to the school and hid out in the bathroom until I left for home. I do not think I went back to the CCD classes ever again. I never told anyone what happened.

This was truly horrific. I was a 12 year old girl who had just begun menstruating several months before. Imagine, being a 12 year old girl and having a priest know that you are menstruating. It happened to me...

I repressed all the memories of my rapes by Lampe and Wheeler. Never to be spoken of until 50 years later when the memories returned. I was 60 when I first spoke of being raped in school. My repressed memories are the result of multiple traumatic events I endured as a child at school.

According to the book "Unto Us A Child: Abuse and Deception in the Catholic Church" by Donald T. Phillips, Wheeler was known as a problem priest for years. He was a problem priest back in the 50s when he was sexually abusing children. Yet, he was sent to Holy Cross in Hutchinson in the 1960s and 70s.

As investigations continue around the country and details emerge about clergy abuse, i.e. Colorado and Pennsylvania, the Catholic Church was aware of sexual predators for decades in

their churches and schools and continued to provide safe harbor for these priests. Their solution to problem priests was to move them around from parish to parish and school to school.

In good faith, my family trusted the church to teach and protect their daughter and granddaughter. The education I received from the church/school was not what my parents sent me to school to learn. No parent wants their child terrorized and abused the way I was terrorized and abused.

The Catholic Church and any institution that protects serial sexual predators should be held accountable for what happened under their roof. As in my case, I was raped multiple times in their sacristy and in their rectory. SB 21-088 lifts the veil of secrecy that only serves to protect serial sexual predators and the institutions that shield them from accountability.

All survivors of sexual violence should be able to find justice for the harm done to them, no matter how long it takes to come forward.

For these reasons, I support SB 21-088. I ask the Committee to vote “yes” to pass this critical piece of legislation supporting survivors like me.

Thank you for considering my testimony and for allowing me to share with you a painful, heartbreaking, and destructive part of my childhood.

Respectfully,
Susan Leighnor, M.A.
719-351-6726

SB21-088 TESTIMONY

Good afternoon Mr. Chairman and Committee Members.

My name is Dr. Anne Marie Woodward. I am a physician who represents the American College of Obstetricians and Gynecologists, aka ACOG. We strongly support of SB21-088 concerning holding rapists and the institutions that protect them, accountable in Civil cases of Sexual Assault.

I have the privilege and joy of practicing in my own home state of CO. I started my practice in 1990. 25 years ago, I started to ask all of my patients about current and past abuse when they came in for their annual exams. I was astounded by the number of women who had a history of sexual abuse. Most of them knew their abusers. Many of them had reported the crime but nothing happened to the rapists.

Statistics show that 1 out of 3 females and 1 out of 4 males will be sexually assaulted over their lifetime. 70% of survivors know their attackers. Unfortunately, when my patients told others about their rapes, they were discredited and disregarded.

I quickly realized that institutions also discredited and disregarded patient's reports of rapes. In some cases, they intentionally hid the information, without consequences to the rapists.

In 2015, two children whom I taught in Sunday School for 11 years, told me very specific detailed accounts of being repetitively raped by one of the Senior Pastors at our Church. These rapes occurred for over a decade. These now college students, wanted to tell the police to keep him from raping other children. I went with them when they talked to the police. The police said that the students' accounts were credible and set up an investigation. The Pastor and the Church did not return the calls of the police. I personally talked with the Pastor and the Elders of this church. They denied everything and discredited the children and me. The Elders said they needed one more child to come forward before they could do anything. I couldn't believe that this mega Protestant church would allow another child to be raped before they did anything. This Pastor is still working at this church, six years later. I therefore left my family's church of

42 years, in disgust. I realized that our current laws benefit the predator and the institutions that protect them.

I immediately decided to work on our own Colorado law so that when the victims feel ready to come forward, they will have the opportunity to do so, and not be dismissed, disregarded and have the rapist protected by organizations. I began to talk with my fellow ACOG Executive and Legislative members regarding this issue. They wholeheartedly supported this Bill concept. Next, I talked with lobbyists, victim advocate groups, legislators, democrats, republicans, colleagues and friends. With a lot of counsel and input from all of these varying perspectives, we now have over 50 organizations from every corner of the state, that support this Bill. We also have bipartisan sponsors.

Holding institutions responsible for ignoring or protecting rapists, will prevent more children from being raped and shift the cost resulting from the rape, from the survivor to the rapists and the institutions that protect them. Our current laws protect the rapists and not the survivors. We need to change the law. SB21-088 accomplishes this by: Holding accountable BOTH the perpetrators and institutions that protect them.

ACOG strongly supports SB21-088 and has been working for 5 years to get this horrendous widespread attack on children, remedied.

I urge you to vote yes for this SB21-088.

Written Testimony for SB21-088

Eric Bergman, Policy Director, Colorado Counties, Inc.

Good afternoon, Mr. Chair and Committee Members. My name is Eric Bergman and I am the policy director for Colorado Counties, Inc. This is a necessary and difficult conversation and we applaud the sponsors for taking it up. While my association supports policy changes to ensure justice for victims of abuse, we do have serious concerns about the bill as introduced and especially the changes it makes to the Colorado Governmental Immunity Act (CGIA). For this reason, CCI voted earlier today to oppose the legislation unless it is amended. We have been in contact with the bill proponents and are seeking amendments to the bill that will address these concerns. We thank you for your time and consideration today.