

Sunrise Family Resource Center
Testimony regarding H330
April 18, 2019

Good morning. Thank you for hearing testimony on this important bill. My name is Merrill Bent, and I am an attorney at Woolmington, Campbell, Bent & Stasny, in Manchester Vermont. Here with me is Denise Main, the Executive Director of my client, Sunrise Family Resource Center, which is a parent-child center offering important services to the community in Bennington, Vermont.

To provide a little bit of background about the organization, Sunrise has been serving the Bennington community for 50 years, as of this year. These services include, just to name a few:

- Early care and education program
- On-site high school program
- Intensive family based services
- Community based childcare support services and subsidies
- Children's integrated services
- Community-based playgroups
- Reach up case management
- Family supportive housing
- Youth development programs
- AHS services coordination
- Parent education and support services

Sunrise provides services to 1,500 families in the community each year. You will notice that some of the services I listed involve the administration of state-funded programs, such as Reach Up. In fact, 95% of Sunrise's funding is for state-funded programming, through contracts or grants. These services provide a lifeline of support for parents and children during important childhood years.

The reason we wanted to speak to you today is that Sunrise finds itself in a situation that offers a real-life illustration as to the competing interests that concern the application of statutes of limitations. The potential impacts of this very well-meaning legislation are significant and, over time, could impact many thousands of Vermonters—specifically those who rely on services from parent-child centers, schools, and other nonprofit organizations throughout the State. Some of these impacts are not obvious without considering the potential fallout where an ancient claim should arise.

Statutes of limitations exist in order to (1) ensure that Plaintiffs get to the courtroom within a reasonable timeframe; and (2) to protect defendants' rights by placing limitations on the amount of time they have to defend against ancient claims. The law recognizes finality as an important concept

because eventually evidence becomes stale, making it impossible to get to the truth of a matter after a certain point, which of course is a fundamental purpose of our adversarial legal system.

Eliminating a statute of limitations and making that change retroactive—even reviving otherwise expired claims—would jettison the policy goals behind limitations periods entirely. For that reason, the revival provision is likely unconstitutional under Vermont law.

Please consider our example. In 1988, allegations of on-the-job sexual abuse arose against one of Sunrise’s former employees. It began with one parent, but quickly became a more widespread concern, as often occurs in these cases. These concerns were reported to and substantiated by the Department of Social and Rehabilitative Services. The employee in question appealed from that determination, and the appeal ultimately was heard by the Human Services Board.

The Human Services Board conducted a thorough investigation. The Board heard from numerous parents, teachers at Sunrise, and the medical professionals who were involved in providing medical treatment to the children involved in the allegations.

Ultimately, the Human Services Board heard testimony at a hearing that cumulatively lasted six days. The amount of evidence that would have been involved in six hearing days would have been substantial. It would have included recordings of all of the testimony and the documentary evidence introduced into the record for consideration by the Board. At the end of its comprehensive review and hearing process, the Human Services Board issued detailed findings based on the evidence, and concluded that no abuse had occurred. Specifically, the Board found that the primary parent leading the charge was not credible, and that the child’s doctor had not in fact observed or reported seeing evidence of sexual abuse, as the mother had reported to SRS. The Board also specifically found that the probability of parental influence on the children was high, and that it was likely that the parents had discussed with the children what to say to SRS investigators.

One of the parents had filed a lawsuit prior to the conclusion of the Human Services Board appeal. After the Board issues its findings, the lawsuit was dropped, and therefore the evidence was not tested again in court.

The allegations then lay dormant for the 30 years. Directors, employees, and thousands of families have come and gone through Sunrise’s doors in that time. Institutional knowledge of the incident diminished with each passing year, until it reached zero as none of the directors from the 1980’s remain at the organization.

Also during this 30-year period, the evidence that supported the Human Services Board decision was destroyed. According to the Human Services Board records custodian, all of the records in this file were destroyed in a fire in the late 1990’s. This means that the very evidence that led the Board to conclude that the allegations of abuse were not credible in 1988 no longer exists.

In 2017 and 2018, three children who were the subject of the 1988 investigation filed coordinated lawsuits against Sunrise presenting the same underlying allegations. We are not here today to assess the underlying merits of these particular cases. We are here to emphasize that without a statute of limitations, Sunrise will be required to defend against 30-year-old allegations without the benefit of the contemporaneous evidence that we know based on the Board's findings would have been exculpatory. This situation illustrates how this policy choice will impact this organization, and others like it throughout the State. This choice will also have a less obvious impact on the people served by these organizations.

Here is what we know:

- We know that in 1988 and 1989, the available evidence supported the Human Services Board's finding that no abuse had occurred.
- We know that this evidence is no longer available, owing to the passage of time.
- We know that in the absence of the exculpatory evidence that once existed, Sunrise will be unable to reasonably defend itself in court.
- We know that memories fade over 30 years.
- We know that some witnesses are no longer available at all.
- We know that passions are understandably high when it comes to allegations of sexual abuse against children.
- We know that the cost of litigation is high—not only attorneys' fees, but the expense of investigating, interviewing potential witnesses, taking depositions, obtaining transcripts, and hiring experts.
- We know that if Sunrise is unable to find and rely on the now-destroyed evidence, there is a much higher chance that judgment will be entered against it.
- We know that if judgment is entered against Sunrise, it will file for bankruptcy. In fact, there is a likelihood that Sunrise would be forced to do so before ever reaching a trial.
- We know that if Sunrise files for bankruptcy, it will lose funding, and no longer be able to offer the breadth of services it now does—and it may shut down completely.
- We know that if Sunrise loses significant funding or shuts down, many of the services offered in the Bennington community will be lost, affecting the 1,500 families to whom Sunrise provides critical services annually, including by administering state programs.

You might wonder about insurance coverage. A lot insurance policies completely exclude coverage for allegations of sexual abuse. If you are able to get coverage, it is for a much higher rate. If a claim is ever made, your carrier will most likely not offer another policy in the future. In Sunrise's case, its insurer has denied coverage due to the fact that the case had first arisen in the context of the 1980's investigation and was therefore excluded as a "prior claim" under the policy definitions. In other words, Sunrise is left to bear the expense of defense without the benefit of insurance *because* the underlying allegation had already been heard and rejected by the Human Services Board 30 years ago.

What we want you to understand is that, as written, this is a zero-sum issue for Sunrise, and for many other organizations like it. We want you to understand that the financial implications impact not only the organizations entrusted to administer the programs for which the State itself is responsible by legislative mandate, but also the vulnerable populations who benefit from those programs.

We are not asking that members of the Legislature vote against this bill. There can be no doubt that Sunrise supports children, promotes child safety, and seeks to protect them wherever possible. What we ask is that the bill be shaped to take into consideration the competing policy interests in order to keep some important protections in place for just such a situation as Sunrise now finds itself in—which is going to be very common should this legislation be enacted as written.

Options to shape the legislation to better balance these competing interests might be:

- To eliminate the retroactivity and revival provisions, so that the new law applies prospectively and organizations are able to appropriately account for it and insure against it, whatever the cost;
- To extend the statute of limitations, but cap the limitations period at age 30, as other states have done. This would provide for at least 12 years of adulthood in which to bring a claim as opposed to 6;
- To raise the standard for liability applicable to employers from simple negligence to a gross negligence standard, as the bill was originally introduced.

Revising the proposed bill in these ways would limit the potential negative impact on our community organizations—and the altruistic people who work for them. These changes would allow small parent-child organizations to continue to provide services and administer important state benefits to our friends and community members. Sunrise is just one example of how statutes of limitations repeal may negatively impact the very populations it is designed to help. We believe in the impetus behind this legislation, but we would like to see this policy choice implemented in a way that does not devastate important services throughout the State.

Thank you for your time. We are happy to respond to your questions.