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Via Electronic Mail

Vermont House Committee on Judiciary
C/O: Evan O'Connor
House Judiciary Committee Assistant
115 State Street
Montpelier, VT 05633
(802) 734-0046
legislature.vermont.gov

RE: Vermont Senate Bill 99: An Act Relating to Repealing the Statute of Limitations for Civil Actions Based on Childhood Physical Abuse

Dear House Judiciary Committee Members,

Thank you to the House Committee on Judiciary for the opportunity to provide testimony on these important matters. Child abuse is an epidemic in this country, causing so much trauma to so many children. Vermont has led the charge as it related to childhood sexual abuse. We hope the state continues its efforts to lead the nation by repealing the Statute of Limitations (“SOL”) based on childhood physical abuse, with the passage of Senate Bill 99.

A statute of limitations is an arbitrary and technical legal rule that has no bearing over the severity of the crime committed or its impact. Throughout our history, SOL’s have only served to protect perpetrators, and institutions responsible for them, from being held accountable and prevented countless survivors from obtaining justice. When a child is physically abused and hurting, the main concern should be to heal, without the unnecessary pressure of a deadline looming over them. The untold stories of children who have no one looking out for them and who never receive help or the opportunity to heal, are countless. Repealing the statute of limitations for civil lawsuits will allow past survivors, who are finally ready to disclose, to seek justice and hold perpetrators and their enablers accountable. This will raise awareness regarding the epidemic of abuse, assist in ensuring institutions are more actively protecting children from abuse and shift the costs from Vermont tax payers to those responsible for the harm, ultimately making Vermont a safer place.

I. Child Abuse is an Epidemic in the United States and Vermont is not Spared from this Tragic Issue

Historically there has been a level of secrecy and affirmative blindness that has overshadowed the child abuse suffered in this country. This has only been reinforced by short statutes of limitations that have limited survivors abilities to seek justice for the severe harm

they have suffered. Institutions and perpetrators have benefited from the limited SOL's while most survivors have suffered. Limiting the timeframe to bring claims further serves to reinforce the false idea that childhood physical abuse is an issue of the past, when in reality it is an epidemic that continues today.

There are 3.3 million cases of child abuse or neglect made annually in the United States, affecting almost 6 million children, and these are just the report cases. See <https://www.humanservicesedu.org/child-abuse/>. The United States has the distinction of having the worst record of an industrialized nation with five deaths a day due to child abuse or neglect. *Id.* The most common form of abuse is physical abuse which affects 17.6% of the children who are abused. *Id.* Children often suffer from both physical abuse and neglect, as neglect affects 78.3% of all children who are abused. *Id.* Psychological abuse is also common but underreported by comparison due to that fact that usually does not endanger a child's life the way physical abuse or neglect might, but the impact is equally severe. These statistics establish that the societal epidemic of child abuse must be addressed.

Vermont statistics do not fare any better. In the 2019, Vermont's DCF Report on child abuse noted:

- 20,078 reports were made
- 78% of the reports made were from mandatory reporters; at least 17% were from non-mandatory reporters
- Of the 20,078 reports received
 - there were 4,606 child safety interventions.
 - 2,640 investigation and 1,966 assessments
- At the conclusion of the 4,606 child safety interventions
 - 1,047 cases were opened for ongoing services
- At the conclusion of the 2,640 investigations
 - 822 reports were substantiated
- Based on the 822 substantiated reports, there were
 - 1,004 unique child victims
 - 149 incidents of physical abuse
 - 475 incidents of risk of harm

Vermonters well know that there is a concerning history of institutional child abuse that has haunted the state and its children for decades. Institutional child abuse occurs when children are abused under the care of a specific entity like church, school, group home, medical facility, workplace, or other facility or institution. Children are placed in these institutions expecting to find safety and instead are met with more pain and trauma.

The tragic story of abuse and suffering at St. Joseph's Orphanage is heartbreaking. From the 1850's to the 1970's, hundreds of children were placed into St. Joseph's Orphanage when they

had nowhere else to go. St. Joseph's Orphanage was supposed to be a home intended to care for orphaned children. Instead the children that were placed there were brutally physically abused, sexually abused, psychologically abused, mutated, and murdered children. Kurn Hattin Homes for Children was considered a "safe place" for children who came from their troubled home lives or had learning disabilities or behavior problems. Rather than care for those children and keep them safe from harm, many were physically, emotionally, and sexually abused ranging as far back to the 1950's to the present day. The Vermont Catholic Churches extends this horrific past as they represented a place of worship where children went to practice religious freedom and instead were physically abused and raped by once trusted pastors from the mid-1900s to the early 2000s.

The following is just a sample of reported/documented child abuse within Vermont institutions throughout the decades:

- Children were made to kneel or stand for hours with their arms straight out holding an item.
- Children were hung upside down out the windows, over wells, or in laundry chutes.
- Children were locked in cabinets, closets, and attics for days until they were forgotten.
- Children were exposed to the incidental and purposeful deaths of other children.
- Children were continuously raped and forced to get an abortion by the caregivers.
- Children were forced to stand outside without a coat in the snow overnight until they fell unconscious.
- Children were forced into cruel and inhumane exercises for hours on end with their pants around their ankles.
- Children were punched, beaten, and kicked down flights of stairs as punishments for minor "offenses."
- Children were given broken bones/infections and were neglected by their caregivers to get necessary medical attention.
- Children were tied to a tree naked and hit, whipped, and punched.
- Children were forced to re-eat their vomit and were choked with urine-filled rags.

In a world of uncertainty, there are increasingly alarming external factors that prevent child abuse from being properly prevented and addressed. For instance, the Vermont Department of Children and Families Commissioner reported he believed the spike in reported cases of child abuse in 2018 was due to the opioid crisis. "The negative impact of opioids on those who misuse them has been widely documented. Despite significant spillover effects in the form of

elevated rates of child maltreatment and child welfare system (CWS) involvement for children affected by parent opioid misuse, the public costs of opioid misuse to the CWS remain largely undocumented” (National Child Abuse and Neglect Data System).

Additionally, we have recently seen COVID-19 drastically warp the way our society normally ran. Christine Johnson (FSD Deputy Commissioner for VT DCF) stated:

“In normal times, we rely on mandated reporters-like childcare providers, educators, health care professionals, and others - to have eyes on children and youth and report any concerns to us. The closing of schools and other child and youth-serving programs meant that many reporters were only seeing children remotely. As a result, we are seeing a significant decrease in the number of child abuse and neglect reports we received from mandated reporters.”

Uncontrollable external factors are inevitable and will consistently prevent the proper reporting and preventing of child abuse cases. Repealing the statute of limitations would allow forgiveness on situations like this and provide safeguard that allow children to come forward when able regardless of timing.

II. The Current System in place to Protect Vermont Children is Insufficient

Consistent with the nations trend, child abuse is on the rise in Vermont. The Vermont Department for Children & Families reported the number of child abuse substantiated cases in 2018 was 1,182; that is a significant jump from the 713 from the 6 years prior. With the number of children being harmed in Vermont continuing to rise, the time for change and reform is now.

As we know, it is hard for the authorities to intervene in cases of child abuse unless the instances of abuse are reported. However, there are many concerns over the current Vermont practices when it comes to child abuse. For instance, the disparity between reported abuse and DCF follow-up is growing (even accounting for duplicative reports). The question must be asked; how many legitimate instances of abuse have gone uninvestigated? Even in the cases where VT department workers are assigned, they are spread too thin. The national best practice is for a department worker to take on an average of 12 cases at a time; the Vermont department workers currently have an average of 16.2. The people in charge of ensuring child safety often are overworked and thus not being as effective or efficient as possible.

Monitoring mandatory reporters is also an issue, as there is no procedure in place to ensure they are reporting as required. Mandatory reporters may be the abuser or have an interest in not

reporting child abuse. We have seen this countless times in the DCF records related to Kurn Hattin Homes for Children, when the home was repeatedly cited for failing to timely report abuse. Children themselves rarely report the abuse, as a child does not know what is right or wrong, and their brains are not fully developed. Children are not capable of understanding the full extent of their trauma and injuries when it happens. Children do not realize the full extent of their abuse until their adulthood, when the statute of limitations has long passed, prohibiting them from ever holding the people accountable who hurt them. A repeal of the current SOL for child physical abuse will not only aid Vermont DCF, but it will also ensure children are able to seek out justice regardless of the failing reporting factors that are out of their control.

III. Repealing the SOL for Child Abuse is Supported by Delayed Disclosure Science

The trauma that is associated with child abuse is much more complex and life lasting than the law takes into account. Trauma of childhood abuse impacts memory formation for an unprecedented amount of time. In order to cope with the pain, children's bodies form such a complex defense mechanism that PTSD, memory deficits and complete disassociation have been scientifically accredited as consequences of childhood abuse.

As experts have noted “[a]mong other barriers, children often lack the knowledge needed to recognize [] abuse, lack the ability to articulate that they have been abused, do not 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. Studies suggests that many victims, as much as 33%, never tell anyone of they were abused. 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 victims discover their memories. In fact, the average age of disclosure of child sexual abuse in a study of 1,000 victims was 52 years old.” See www.childusa.org/law.

Vermont legislature has already noted that laws need to be more in line with science when repealing of the civil statute of limitations for child sexual abuse cases, it should do the same with physical abuse and pass S. 99.

IV. Suffering related to Sexual Abuse Is Very Similar to Effects of Physical Abuse, Deserving the Same Protections in Law

Justice Law Collaborative, LLC represents over 30 survivors of abuse at a group home in Vermont, spanning over the past 80 years. In comparing two of our clients, the damaging effects of

a child suffering from physical abuse, are strikingly similar to those who suffered from sexual abuse. John Doe A (Minor) was continuously met with a hard slap across the head with no justification by staff members, he was routinely beaten, his house parents would slam John Doe A's head into the porcelain toilet seat causing him to lose consciousness. John Doe A was also placed inside a cardboard box and repeatedly beaten and kicked as punishment for wetting the bed. The staff would force John Doe A to cruelly and inhumanely exercise for 8 hours straight with his pants around his ankles. If he did not get "low enough on his knee bends," he would be punched and kicked across the room.

John Doe B (Minor) was sexually molested by convicted pedophile, Mark Davis, multiple times while under the residential care of the home. Mr. Davis would bring John Doe B to the basement of Kurn Hattin by bribing and grooming him with movies, treats, and money. Mr. Davis would then separate John Doe B from the other children and touch John Doe B's genitals underneath his clothes. Mr. Davis would then forcibly make John Doe B touch Mr. Davis genitals as well.

Both children were placed in the boarding school in order to find a haven from the turmoil they suffered at home. However, both children were met with severe pain and suffering, only in different legal categories. John Doe A and John Doe B self-medicated with drugs and alcohol to cope with the pain and trauma they suffered as children. Both have suffered extreme economic losses as they were unable to finish school or find work. Due to an adult betraying their trust, neither man has been able to maintain a healthy relationship between friends, family, peers, or partners. John Doe A and John Doe B both had to be hospitalized for numerous suicidal ideations and attempts. The passage of S. 99 is necessary to provide justice for all types of abuse that children suffer.

V. Repealing the SOL will Further the Public Good by Increasing Access to Justice and Preventing Future Abuse

Passing the act to repeal the civil statute of limitations for child physical abuse will allow all past victims an opportunity to start their healing journey and attain justice and accountability for the childhood trauma they have suffered. Not only does this benefit the mental health of the Vermont community, but it also greatly reduces the present danger to all Vermont children when predators and institutions are held accountable. Allowing the survivors of physical abuse to come forward now, will make Vermont a safer place to live.

As experts on child abuse have noted, there are three compelling public purposes served by child sex abuse SOL reform:

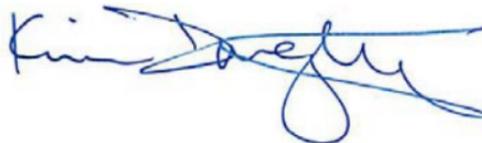
- 1) SOL reform identifies hidden child predators and the institutions that allowed the abuse to the public so children will not be abused in the future;
- 2) It shifts the cost of abuse from the victims and society to those that caused it; and
- 3) It educates the public about the prevalence and harm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

See www.childusa.org/law.

The SOL reform will identify child predators and institutions who once profited as a result of the limited statute of limitations. Unnamed names will begin to be revealed, which can only benefit the community as a whole because those predators will no longer have access to hurt the children of Vermont. Holding perpetrators of abuse, and the institutions that turn a blind eye, accountable will make Vermont a safer place and ensure that institutions provide more oversight over of their employees. Notably, many settlements with institutions will require policy change to ensure future harm is deterred. Passing S. 99 will also make the perpetrators and their enablers responsible for the costs associated with suffering from abuse, as opposed to the Vermont taxpayers. Indeed, 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). Moreover, repealing the statute of limitations will provide the opportunity to educate the public about the epidemic of child abuse so that if people see something, they say something. For example, when the Vermont Catholic Church released the list of 40 Vermont priest to the public, as a result of the civil suits, the Church invested in programs aimed to help prevent these horrific acts from ever happening again.

Vermont has already proven to be a leader in protecting child survivors of sexual abuse. Passage of S. 99 will serve as a continuation of Vermont's nationwide leadership in its efforts to protect children, provide them with an opportunity to right the wrongs of the past and ensure they do not continue into the future. We encourage Vermont Legislators to pass Senate Bill 99. Thank you.

Sincerely,



Kimberly A. Dougherty, J.D., M.S.W.
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