

April 27, 2025

The Hon. Robert E. Craven, Sr.
Chairman, House Judiciary Committee
Rhode Island General Assembly
82 Smith Street
Providence, RI 02903
rep-craven@rilegislature.gov

**Re: House Bill No. 5909 (April 29, 2025 Hearing)
Opposition to Eliminating a Statute of Limitations
and Reviving Time-Barred Claims Against Organizations**

Dear Chairman Craven and Members of the House Judiciary Committee:

On behalf of the American Tort Reform Association (ATRA), I write to respectfully oppose H.B. 5909, which would retroactively eliminate a statute of limitations and revive time-barred lawsuits against schools, nonprofit organizations, youth groups, sports leagues, daycare centers, and others alleging that they did not do enough to protect children from sexual abuse decades ago.

Sexual abuse of a child is abhorrent. Those who commit such acts should be prosecuted and survivors of abuse should have a reasonable time to file a lawsuit against those who are responsible. We respect the advocacy of the sponsors as well as the courage of survivors who may come forward to support it. ATRA commends the Committee for considering steps to help survivors of abuse.

As we have testified on similar proposals, ATRA is concerned with the approach taken by this bill and the troubling precedent it would set by abandoning a core element of the civil justice system – a finite statute of limitations – which allows judges and juries to evaluate liability when evidence is available. The retroactive application of this proposal is especially troubling. When the legislature prospectively (going forward) extends or even eliminates a statute of limitations, organizations are put on notice. They can, going forward, keep meticulous records of the safeguards they put in place to protect children, carefully document any concerns raised and how they responded, document their employment decisions, and save those records *forever*. In the age of electronic data storage, that can be done.

But when the legislature retroactively revives time-barred claims it means that organizations will not have saved paper records from that era, indicating how they screened or trained employees, received reports, or investigated concerns. These records will have been discarded long ago under standard document retention policies. It also means that organizations will not have witnesses available. A supervisor who was 40 years old in 1980, and might recall whether there was any reason to suspect someone was a perpetrator or what safeguards the organization had in place at the time, would be 85 years old today. In claims going back further, both the perpetrator and any staff may no longer be alive.

An organization cannot go back in time to keep records, purchase more insurance, or even decide not to operate in an area knowing that it could be sued in, say, 2030 for what previous employees may have failed to do in the 1960s, 1970, or 1980s. This is not how the civil justice system is supposed to operate – for any type of civil action.

These due process concerns underlie Rhode Island precedent clearly indicating that reviving time-barred claims is unconstitutional. After the legislature extended the statute of limitations for childhood sexual abuse claims against perpetrators in 1993, the Rhode Island Supreme Court ruled in *Kelly v. Marcantonio* that:

Although it is permissible for the General Assembly to enlarge an already existing action limitation period that would be applicable to causes of action thereunder not already time-barred without offending any vested substantive right of the parties, the amendment to art. I, sec. 2, precludes legislation with retroactive features, permitting revival of an already time-barred action that would impinge upon a defendant’s vested and substantive rights and would offend a defendant’s art. I, sec. 2, due process protections.¹

The Court concluded that “our State Constitution bars the retroactive application of [the statute of limitations for childhood sexual abuse] to claims already time-barred by the statute of limitations in effect prior to the effective date” of legislation adopting a lengthier period.²

In taking this approach, the Rhode Island Supreme Court recognized that it followed the “great preponderance” of state appellate courts.³ That remains true today. In fact, in the past five years alone, four states have struck down similar legislation attempting to revive time-barred childhood sexual abuse claims, including Maine,⁴ Colorado,⁵ Kentucky,⁶ and Utah.⁷ As the Maine Supreme Court observed in its January 2025 decision, reviving time-barred claims “contravenes centuries of our precedent.” While it may be tempting to disregard constitutional safeguards in this context, as the Colorado Supreme Court unanimously ruled, “there is ‘no public policy exception’ to the ban on retrospective laws.”

While other states have passed reviver legislation, and some state courts have upheld these laws, the Committee should be aware that H.B. 5909’s complete elimination of the statute of limitations and proposal to indefinitely revive time-barred claims is extreme.

¹ *Kelly v. Marcantonio*, 678 A.2d 873, 883 (R.I. 1996).

² *Id.* at 884. In *Houllahan v. Gelineau*, 296 A.3d 710 (R.I. 2023), the Rhode Island Supreme Court reaffirmed the legislature’s intent, under the 2019 law, to revive claims only against perpetrators. Since the Court dismissed the action on those grounds, it had no need to again rule on the constitutionality of reviving time-barred claims.

³ *Kelly*, 678 A.2d at 884.

⁴ *Dupuis v. Roman Catholic Bishop of Portland*, No. BCD-23-122, 2025 ME 6 (Me. Jan. 28, 2025).

⁵ *Aurora Pub. Schs. v. A.S.*, 531 P.3d 1036, 1048-49 (Colo. 2023).

⁶ *Thompson v. Killary*, 683 S.W.3d 641, 648 (Ky. 2024) (“[O]ur jurisprudence presents nearly 200 years of protection for those possessing a statute of limitations defense.”).

⁷ *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020) (unanimously holding the principle that the legislature violates due process by retroactively reviving a time-barred claim is “well-rooted in our precedent,” “confirmed by the extensive historical material,” and has been repeatedly reaffirmed for “over a century”).

For example, Massachusetts, Georgia, and Michigan,⁸ like Rhode Island, limited revivers to claims against the perpetrator of the abuse, recognizing the problems with evaluating negligence after decades have passed. Arizona, Oregon, Utah, and West Virginia revived claims only against organizations alleged to have engaged in criminal conduct or that knew of the abuse but failed to act. And many of the states that enacted reviver laws extended the statute of limitations, rather than eliminate it, and applied the new period retroactively. They did not revive claims going back indefinitely, as this bill proposes.

Given the loss of records and witnesses, and nature of these revived lawsuits, organizations will have no choice but to settle the cases, even if they had no knowledge of the abuse and were responsible in how they operated. The impact on public entities, nonprofit organizations, and businesses will be extraordinary and may jeopardize programs and services they provide today. Consider, for example, the recent experience of other states that have taken approaches similar to that proposed by H.B. 5909.

Maryland's broad 2023 reviver of time-barred claims created a \$3.5 billion liability hole for the state, which was projected to rise as high as \$34 billion over time, not including litigation costs.⁹ That is because about 4,500 revived claims have already been filed against state and local government entities alone, dating back to the 1960s.¹⁰ As a result, this April, the Maryland legislature amended its 2023 law to avoid, in the words of the sponsor of the original reviver legislation, "punish[ing] and bankrupt[ing] the state."¹¹ It cut damage caps applicable to revived claims by more than half, among other changes, in an attempt to fix the crisis it had created.¹²

Another recent example comes from Los Angeles County, which announced that it is settling 6,800 revived claims, dating back to 1959, for \$4 billion stemming from its juvenile facilities and foster care system. The settlement, which resulted from 3-year California reviver window that opened in 2020, is expected to impact the county, its taxpayers, and its services for decades.¹³

The Committee should also keep in mind that the number of lawsuits following these reviver laws often exceeds predictions. That happened in Maryland, where the state's

⁸ The Michigan law was tailored to revive only claims of victims of a convicted criminal, Dr. Larry Nasser. Mich. Public Act 183 (S.B. 872) (2018).

⁹ *Fiscal and Policy Note*, Third Reader – Revised, H.B. 1378 (Md. 2025).

¹⁰ Ashley Paul, *Maryland Bill Aims to Limit Settlement Money for Victims of Abuse in Juvenile Detention Centers*, CBS News, Apr. 6, 2025; see also Ian Round, *Facing Budget Deficit and Thousands of Sex Abuse Claims, Lawmakers Consider Bill to Limit Liability*, Maryland Matters, Mar. 27, 2025; Madeleine O'Neill, *Maryland's Child Victims Act Could See Changes as State Faces Billion-dollar Liability*, Baltimore Banner, Mar. 3, 2025.

¹¹ Madeleine O'Neill, *Changes to Maryland Child Sexual Abuse Law Could Harm Survivors, Critics Warn*, Baltimore Banner, Mar. 26, 2025 (quoting Delegate C.T. Wilson, the sponsor of Maryland's 2023 Child Victims Act).

¹² H.B. 1378 (Md. passed Apr. 5, 2025). The Maryland legislation reduced the total damage cap for revived claims against public entities from \$890,000 to \$400,000 and the noneconomic damage cap for revived claims against private entities from \$1,500,000 to \$700,000, effective June 1, 2025. The legislation also clarified that the caps apply "per claim" rather than "per incident" of abuse and protected survivor recovery by limiting attorney contingency fees to 20% per settlement and 25% per judgment.

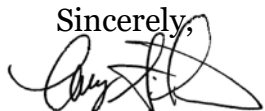
¹³ See Vivian Ho, *Los Angeles County Plans Historic \$4 Billion Payout for Sex Abuse Claims*, Wash. Post, Apr. 5, 2025.

sudden liability exposure came as a shock to even the sponsor of the Child Victims Act. It also occurred in New York, where proponents of that state's 2019 reviver law predicted 2,000 to 3,000 lawsuits would be filed.¹⁴ In just two years, lawyers filed nearly 11,000 revived claims against a wide range of individuals and organizations.¹⁵ New York is only now beginning to attempt to calculate the "multiple billions" that state and local governments will eventually pay to settle revived lawsuits and figure out how those costs will be covered and impact the state.¹⁶

Finally, as we have expressed in previous sessions, ATRA is concerned with the precedent this bill sets for other types of civil claims. Tort law, by its very nature, deals with horrible situations – accidents resulting in serious injuries that have a dramatic impact on a person's life, negligence in the workplace or a defective product that leads to a person's death, and diseases contracted through exposure to toxic substances, for example. Yet, every type of civil claim, no matter how tragic the injury or offensive the alleged conduct, must be brought within a certain period to protect the ability of courts to decide claims when evidence is available. It is never easy for a lawyer to tell a client that the time to sue has passed. If Rhode Island revives time-barred claims here, others will understandably seek similar treatment. That is not a sound path, for the reasons discussed.

Thank you for considering our concerns.

Sincerely,



Cary Silverman

Counsel to the American Tort Reform Association

Cc: House Judiciary Committee members
Roberta DiMezza, Committee Clerk (rdimezza@rilegislature.gov)

¹⁴ Gloria Gonzales, [Insurers Try to Measure Exposure to Childhood Sex Abuse Claims](#), Bus. Ins., Aug. 20, 2019 (quoting Marci Hamilton, founder and CEO of Child USA).

¹⁵ Jay Tokasz, [Nearly 11000 Child Victims Act Lawsuits Filed in New York State](#), Buffalo News, Sept. 26, 2021 (citing Office of Court Administration statistics).

¹⁶ Ryan Whalen, [N.Y. Comptroller: Audit of Child Victims Act Governmental Liability Isn't Feasible](#), Spectrum News 1, Apr. 17, 2025.