



R.I. LEGISLATIVE BRIEFING

Why *Kelly v. Marcantonio* Does Not Prevent the General Assembly From Acting

Prepared for: Rhode Island General Assembly

Prepared by: Kathryn Robb, Esq., Children's Justice Campaign, ENOUGH ABUSE®

Date: March 12, 2026

OVERVIEW

Some policymakers believe that the Rhode Island Supreme Court's decision in *Kelly v. Marcantonio* (1996) prevents the General Assembly from passing a law that allows survivors of childhood sexual abuse to file civil lawsuits even if the statute of limitations has expired.

However, substantial legal arguments suggest that **Kelly should not be interpreted as permanently blocking revival legislation**. Courts across the United States increasingly recognize that:

- survivors of childhood sexual abuse often **cannot disclose abuse until decades later**, and
- legislatures may constitutionally **create limited "revival windows"** allowing these claims to proceed.

A carefully drafted Rhode Island statute could present a strong legal case for the courts to **distinguish, limit, or reconsider Kelly**.

What the *Kelly v. Marcantonio* Decision Said

In *Kelly v. Marcantonio*, the Rhode Island Supreme Court considered lawsuits brought by adults who alleged they had been sexually abused as children by a Catholic priest. The Court ruled that:

- Rhode Island's childhood sexual abuse statute applied only to **individual perpetrators**, not institutions.
- Claims against institutions were governed by the **standard personal injury statute of limitations**.
- If a claim is already time-barred, reviving it could violate the Rhode Island Constitution because defendants may have a **"vested right" in the statute-of-limitations defense**.

Because of this language, some observers erroneously interpret *Kelly* to mean that Rhode Island **cannot reopen expired civil claims for child sexual abuse**.

However, the legal reasoning in *Kelly* is **not universally accepted and is distinguishable from modern revival statutes**.

WHY THE LEGISLATURE MAY STILL ENACT A REVIVAL STATUTE

1. Statutes of Limitations Are Traditionally Procedural

Historically, courts have treated statutes of limitations as **procedural rules about when lawsuits can be filed**, not as property rights belonging to defendants. The U.S. Supreme Court stated this principle clearly in *Campbell v. Holt*, 115 U.S. 620 (1885) "*No person has a vested right in a statute of limitations defense.*"

Because of this understanding, many courts allow legislatures to **modify or revive expired claims**.

2. Most Courts Reject the “Vested Rights” Theory Used in *Kelly*

Many modern courts have rejected the idea that defendants gain a constitutional right once a statute of limitations expires. Courts in several states have upheld child sexual abuse revival laws, including:

- Massachusetts
- California
- Delaware
- Connecticut
- Louisiana
- New Jersey
- Vermont
- Maryland

These courts typically apply **rational-basis review**, meaning the law is constitutional if it serves a legitimate public purpose. Addressing childhood sexual abuse—and the barriers survivors face in reporting it—has consistently been recognized as such a purpose.

3. *Kelly* Did Not Address Modern Revival Window Laws

The law considered in *Kelly* was **not a modern revival statute**. Instead, it was simply an **extension of an existing statute of limitations**. Modern revival statutes are structured differently. They typically:

- reopen previously expired claims for a **limited time period** (often 2–3 years);
- apply specifically to **childhood sexual abuse cases**;
- include **legislative findings** explaining why survivors often delay disclosure.

Because the statute in *Kelly* lacked these features, the case **did not directly address the constitutionality of a modern revival window law**.

4. Scientific Research On Trauma Has Advanced Since 1996

When *Kelly* was decided nearly 30 years ago, courts had not yet widely recognized the extensive research showing that survivors often delay reporting childhood sexual abuse.

Research now shows that delayed disclosure can result from:

- trauma and psychological coping mechanisms
- grooming and manipulation by abusers
- fear of retaliation or disbelief
- institutional pressure to remain silent

Today, legislatures routinely incorporate these findings into revival statutes, and courts often rely on them when upholding such laws.

5. Rhode Island Law Is Not Consistent On “Vested Rights”

In other contexts, Rhode Island courts have allowed **retroactive changes to procedural or remedial laws**. This suggests that the strong “vested rights” approach used in *Kelly* may not represent a consistent rule across Rhode Island jurisprudence.

6. The Rhode Island Constitution Does Not Mention Statutes Of Limitations

The *Kelly* decision relied on the due-process clause of the Rhode Island Constitution. However:

- the constitution **does not mention statutes of limitations**, and
- it **does not define them as property rights**.

States with similar constitutional language—including Connecticut, Delaware, and New Jersey—have upheld revival statutes.

7. **The National Trend Strongly Supports Revival Statutes**

Since the 1990s, many states have enacted laws allowing survivors of childhood sexual abuse to file claims that were previously time-barred. Courts have overwhelmingly upheld these statutes. The national trend reflects a growing recognition that:

- childhood sexual abuse is uniquely difficult to disclose
- institutions have historically concealed abuse
- civil litigation can promote accountability and public safety.

KEY TAKEAWAY FOR LEGISLATORS

Although *Kelly v. Marcantonio* is often cited as a barrier to revival legislation in Rhode Island, **substantial legal arguments exist that the decision should not control modern legislation.** Important distinctions include:

- statutes of limitations are traditionally **procedural, not vested rights**
- modern courts often reject the **vested-rights reasoning** used in *Kelly*
- the statute in *Kelly* differed from **modern revival window laws**
- scientific research now explains **why survivors delay disclosure**
- many states have enacted revival statutes that courts have upheld.

CONCLUSION

A carefully drafted revival statute—supported by clear legislative findings regarding delayed disclosure of childhood sexual abuse—could provide a strong legal basis for the Rhode Island Supreme Court to **distinguish, limit, or reconsider the reasoning in *Kelly v. Marcantonio*.**

For these reasons, *Kelly* should not be viewed as an automatic constitutional barrier to legislative action for child sexual abuse claims.

1996: *Kelly Decision* — BEFORE THE NATIONAL RECKONING OF CHILD SEXUAL ABUSE

1996

MAJOR CHILD SEXUAL ABUSE SCANDALS →

Kelly v. Marcantonio

RI Supreme Court:
Limits Revival of Time-Barred
Abuse Claims



BEFORE
NATIONAL AWARENESS

30 YEARS



2002

BOSTON GLOBE
"SPOTLIGHT"



2008 / 2019

JEFFREY
EPSTEIN



2011-2012

PENN STATE /
SANDUSKY



2017-2018

LARRY
NASSAR



2018-2019

OHIO STATE /
STRAUSS



2019-2022

BOY SCOUTS
OF AMERICA

NATIONWIDE ABUSE REVELATIONS



RI HOUSE BILL NO. 7200

Revival Window Legislation Allows
Survivors to Bring Civil Suits for Past Child Abuse

TIMELINE: National Awareness of Institutional Child Sexual Abuse Following the 1996 *Kelly v. Marcantonio* Decision*

Year	Event	Description / Significance
1996	<i>Kelly v. Marcantonio</i> – Rhode Island Supreme Court	Court suggests that reviving time-barred child sexual abuse claims could violate due process because defendants may have a “vested right” in the statute-of-limitations defense. The decision occurred before most major institutional abuse scandals became public.
2002	Boston Globe “Spotlight” Investigation	Investigative reporting exposed systemic sexual abuse by Catholic clergy and institutional cover-ups. Hundreds of cases emerged nationwide and the investigation reshaped national awareness of institutional abuse.
2003–2005	Michael Jackson Abuse Allegations and Trial	High-profile criminal allegations against Michael Jackson brought international attention to child abuse allegations involving powerful public figures.
2008 / 2019	Jeffrey Epstein Sex Trafficking Scandal	A controversial 2008 plea deal drew criticism. In 2019, federal sex-trafficking charges revealed a large network of victims and renewed scrutiny of institutional failures and delayed accountability.
2011–2012	Penn State / Jerry Sandusky Scandal	Former Penn State assistant football coach Jerry Sandusky was convicted of sexually abusing boys. The scandal exposed institutional failures and triggered nationwide reforms in reporting and youth protection.
2017–2018	USA Gymnastics / Larry Nassar Case	Former team doctor Larry Nassar was convicted of sexually abusing athletes. Over 150 survivors delivered victim impact statements, making it one of the largest sexual abuse scandals in sports history.
2018–2019	Ohio State University Abuse Scandal	Investigation concluded that team doctor Richard Strauss abused hundreds of student athletes. The scandal highlighted institutional failures to respond to reports of abuse.
2019–2022	Boy Scouts of America Abuse Litigation	More than 82,000 survivors filed abuse claims in one of the largest sexual abuse cases in U.S. history, leading to bankruptcy proceedings and major settlements.
2026	R.I. AG Report	AG Peter Neronha report identified 75 clergy members in the Providence Diocese credibly accused of sexually abusing more than 300 children. Church leadership engaged in cover-up - they failed to report abuse and consistently moved accused priests.
2026	THE SOLUTION R.I House Bill No. 7200 Revival Window Legislation	Proposed legislation allowing survivors of childhood sexual abuse to bring civil claims that were previously time-barred, reflecting modern understanding of delayed disclosure and institutional accountability.

*There are many others as well - Pennsylvania Catholic Church Grand Jury Report (2018), Southern Baptist Convention Abuse Scandal (2020), USA Swimming (2015-2019)