S.B. 739, A Bill That Would Revive Time-Barred Claims
Testimony of Cary Silverman
On Behalf of the American Tort Reform Association
Before the Rhode Island Senate Judiciary Committee
Tuesday, May 27, 2025

On behalf of the American Tort Reform Association (ATRA), thank you for the opportunity to testify today regarding S.B. 739, 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.

I am a partner in a national law firm, Shook, Hardy & Bacon L.L.P. and serve as counsel to ATRA, a broad-based coalition of businesses, municipalities, associations, and professional firms that promote fairness, balance, and predictability in civil litigation.

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. 1, 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." I have attached a separate paper addressing the constitutional issue in greater depth.

While other states have passed reviver legislation, and some state courts have upheld these laws, the Committee should be aware that S.B. 739's complete elimination of the statute of limitations and proposal to indefinitely revive time-barred claims is extreme.

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[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 (invalidated), 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 S.B. 739.

Maryland's reviver of time-barred claims created a $3.5 billion liability hole for the state alone, which was projected to rise as high as $34 billion over time, not including litigation costs.[9] That is because at the time the Maryland Department of Legislative Services conducted its analysis in early March 2025, about 4,000 revived claims have already been filed against the state. Two months later, that figure reportedly rose to 6,000 lawsuits and is expected to continue to surge.[10] These claims date as far back as the 1960s.[11] This huge sum does not account for the unanticipated liability facing nonprofit organizations and businesses throughout the state. Even the sponsor of Maryland's Child Victims Act, himself an abuse survivor, was taken aback by the number of lawsuits filed and the amount they sought, blaming attorneys "that want to capitalize on Maryland's pain."[12] In response, this session, he supported legislation amending Maryland's 2023 reviver law to avoid "bankrupting the state" by cutting damage caps applicable to revived claims by more than half effective June 1, 2025.[13] That law also clarified that the damage caps apply per claim, rather than per incident.[14]

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

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[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] Luke Parker, *Victims Decry Lower Caps on Abuse Claims*, Baltimore Sun, Apr. 28, 2025.

[11] Ashley Paul, *Maryland Bill Aims to Limit Settlement Money for Victims of Abuse in Juvenile Detention Centers*, CBS News, Apr. 6, 2025.

[12] Parker, *supra* (quoting Del. C.T. Wilson).

[13] For revived claims against public entities, Maryland reduced its maximum payment from $890,000 to $400,000. For private entities, Maryland reduced a limit on noneconomic damages from $1,500,000 to $700,000. *See* 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.

[14] H.B. 1378 (Md. 2025).

California reviver window that opened in 2020, is expected to impact the county, its taxpayers, and its services for decades.[15]

The Committee should also keep in mind that the number of lawsuits following these reviver laws often exceeds predictions. That happened in Maryland, as noted. 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.[16] In just two years, lawyers filed nearly 11,000 revived claims against a wide range of individuals and organizations.[17] 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.[18] Nonprofit agencies that provide services to hundreds of thousands of families statewide are reportedly in danger of collapse.[19] In response, legislators have introduced legislation to establish a $200 million fund, financed by taxpayer dollars, to bail out public school districts and voluntary foster care agencies that face crippling liability from revived claims.[20] As the bill analysis notes, "due to the age of some filed claims, there are many cases in New York where no insurance coverage can be discovered." The fund is needed, the bill justification says, "to allow public school districts and voluntary foster care agencies who would otherwise be forced to close or severely cut services."[21]

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 the opportunity to testify today and considering ATRA's concerns as you address this difficult and important issue.

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

[16] 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).

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

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

[19] Susanti Sarkar, *As Survivors Seek Justice, New York Child Welfare Agencies Face the Costs of Decades-Old Sexual Abuse Lawsuits*, The Imprint, Feb. 19, 2024.

[20] S. 3149 / A. 1891 (N.Y. 2025).

[21] *Id.*

The Rhode Island Supreme Court Ruled in *Kelly v. Marcantonio* that the General Assembly Cannot Constitutionally Revive Civil Lawsuits After the Time to File Them Has Ended

Background. Prior to 1992, Rhode Island's three-year statute of limitations for personal injury claims applied to lawsuits alleging injuries from childhood sexual abuse. That year, Rhode Island established a special cause of action for childhood sexual abuse claims, § 9-1-51.[1] For those claims, the General Assembly initially provided three years to file a lawsuit from when a victim discovered or reasonably should have discovered the injury caused by the abuse. The following year, the legislature extended this three-year period to seven years.[2] In *Kelly v. Marcantonio*, 678 A.2d 873 (R.I. 1996), the Rhode Island Supreme Court considered this question:

> "Whether . . . it is constitutionally permissible for our General Assembly to revive a previously time-barred cause of action by application of § 9-1-51 to that cause of action."[3]

The Court answered, no:

> "[O]ur State Constitution bars the retroactive application of § 9-1-51 to claims already time-barred by a statute of limitations in effect prior to the effective date of § 9-1-51."[4]

This paper explains the *Kelly* decision and key developments since that time.

The Rhode Island Supreme Court ruled in *Kelly* that the General Assembly cannot revive time-barred claims. Pointing to the Rhode Island Constitution's due process clause, the Court explained:

> 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. 1, sec. 2, due process protections.[5]

The Rhode Island Supreme Court acknowledged that the "general federal rule" is that reviving a time-barred civil action is permissible. It noted, however, that state appellate courts "are free to interpret and to construe their own state constitutional due process and equal protection provisions" to provide greater protections than offered by the U.S. Constitution.[6] The Court concluded that "our State Constitution bars the retroactive application of [the extended statute of limitations] to claims already time-barred by a statute of limitations in effect prior to the effective date of [that extension]." This conclusion was consistent with prior rulings on statutes of limitations for other claims.[7]

The Court observed that this interpretation of the due process clause protects both plaintiffs and defendants from unfair, retroactive amendments to statutes of limitations.[8] Just as protection of vested rights prohibits the legislature from extending a statute of limitation in a manner that revives an expired claim, it also prohibits the legislature from retroactively shortening the period, cutting off a plaintiff's ability to bring an accrued claim or leaving an unreasonable and inadequate time to do so.[9]

Since *Kelly*, there have been five significant developments.

1. **The Rhode Island Supreme Court has reaffirmed that the legislature may not revive time-barred claims.** In a 2003 decision, the Court observed: "*Kelly* held that it would be permissible for the General Assembly to enlarge a limitation period and apply the amendment retroactively to pending cases that were not yet time-barred, but that due process, under the amended constitutional provision, precluded legislation that retroactively revived a time-barred action. Thus, we concluded, such legislation would violate a defendant's vested and substantive rights to defend on statute of limitation grounds."[10]

2. **The Rhode Island Supreme Court ruled that courts may toll (suspend) the running of the statute of limitations in cases alleging repressed recollection of past sexual abuse.**[11] The Court had left this question unanswered in *Kelly*.[12] The Court answered it in 2016.

3. **The General Assembly further extended the statute of limitations for lawsuits stemming from childhood sexual abuse in 2019**.[13] This law extended the period to file a lawsuit from 7 years to 35 years of turning 18 (age 53), and provided a 7-year period to bring a claim from when a victim discovers or reasonably should have discovered the injury. The General Assembly applied the extended period to lawsuits against both perpetrators of abuse and entities alleged to have negligently hired or supervised employees or volunteers. As introduced, the 2019 legislation would have applied these provisions retroactively and broadly revived claims for which the statute of limitations had already expired. Before enactment, however, the General Assembly amended the bill to permit time-barred claims against perpetrators only.

4. **The Rhode Island Supreme Court reaffirmed that the 2019 reviver applied only to claims against perpetrators. It has not revisited *Kelly*.** In a 2023 ruling, the Rhode Island Supreme Court found that the lower courts properly dismissed negligence claims stemming from abuse that occurred in the 1970s and 1980s, as these lawsuits were not revived by the 2019 law. Since the General Assembly had not revived those claims, the Supreme Court did not have reason to consider the 2019 law's constitutionality.[14]

5. **Since Rhode Island enacted the 2019 law, four states have found similar reviver laws unconstitutional.**[15] These courts joined what the Rhode Island Supreme Court described in *Kelly* as the approach followed by the "great preponderance" of state appellate courts.[16] This remains true today as it was in 1996. As the Maine Supreme Court recognized this year, "the majority of state courts of last resort continue to adhere to the view that revival is precluded" and found "precedent from the minority of other jurisdictions that allow revival after their statutes of limitations have expired is not persuasive.[17]

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[1] P.L.1992, ch. 84.

[2] P.L.1993, ch. 274, § 1.

[3] *Kelly*, 678 A.2d at 880.

[4] *Id.* at 884.

[5] *Id.* at 883.

[6] *Id.*

[7] *Spunt v. Oak Hill Nursing Home, Inc.*, 509 A.2d 463, 465-66 (R.I. 1986) (holding that extension of the statute of limitations for wrongful death claims from two to three years could retroactively apply when it "does not act to revive a dead cause of action because the plaintiff's claim was never time barred").

[8] *Kelly*, 678 A.2d at 883 (recognizing that an immunity from a lawsuit is as valuable a right as the right to prosecute that suit; both are vested rights protected against legislative deprivation by due process and both are entitled to constitutional protection).

[9] *See, e.g., Rotchford v. Union R. Co.*, 54 A. 932, 933 (R.I. 1903) (interpreting a reduction of the statute of limitations for personal injury actions from six years to two years to not apply retrospectively to accrued claims).

[10] *Theta Properties v. Ronci Realty Co.*, 814 A.2d 907, 916-17 (R.I. 2003) (holding that a law extending the time to sue a dissolved corporation could not apply retroactively to allow claims after the two-year period that applied at the time had expired).

[11] *Hyde v. Roman Catholic Bishop of Providence*, 139 A.3d 460 (R.I. 2016) (determining that repressed recollection would toll the statute of limitations where the plaintiff at issue met the standard for unsound mind under Rhode Island law).

[12] *Kelly*, 678 A.2d at 879.

[13] S. 315 Sub. A (R.I. 2019) (enacted and effective July 1, 2019) (amending R.I. Gen. Laws § 9-1-51).

[14] *Houllahan v. Gelineau*, 296 A.3d 710 (R.I. 2023).

[15] *Aurora Public Schools v. Saupe*, 531 P.3d 1036 (Colo. 2023); *Thompson v. Killary*, 683 S.W.3d 641 (Ky. 2024); *Mitchell v. Roberts*, 469 P.3d 901, 903, 913 (Utah 2020); *Dupuis v. Roman Catholic Bishop of Portland*, No. BCD-23-122, 2025 ME 6 (Me. Jan. 28, 2025).

[16] *Kelly*, 678 A.2d at 883.

[17] *Dupuis*, 2025 ME 6, at ¶ 34.