

12-6-2023

How Can They Be Silenced? Why Ohio Must Amend Its Civil Statute of Limitations for Child Sexual Abuse Claims

Mackenzie F. Reiber
University of Dayton

Follow this and additional works at: <https://ecommons.udayton.edu/udlr>



Part of the [Law Commons](#)

Recommended Citation

Reiber, Mackenzie F. (2023) "How Can They Be Silenced? Why Ohio Must Amend Its Civil Statute of Limitations for Child Sexual Abuse Claims," *University of Dayton Law Review*. Vol. 49: No. 1, Article 6. Available at: <https://ecommons.udayton.edu/udlr/vol49/iss1/6>

This Comment is brought to you for free and open access by the School of Law at eCommons. It has been accepted for inclusion in University of Dayton Law Review by an authorized editor of eCommons. For more information, please contact mschlange1@udayton.edu, ecommons@udayton.edu.

How Can They Be Silenced? Why Ohio Must Amend Its Civil Statute of Limitations for Child Sexual Abuse Claims

Cover Page Footnote

I want to thank my parents, Robbie and Melissa Reiber, and my brother, Dr. Jordan Reiber, for their constant support on this incredible and often intimidating journey to becoming the first lawyer in our family. I also want to thank my grandparents; my Comment Editor, Justin T. Elkin, Esq.; my friends; and my Faculty Advisor, Ericka Curran, who encouraged and helped me each step of the way.

HOW CAN THEY BE SILENCED? WHY OHIO MUST AMEND ITS CIVIL STATUTE OF LIMITATIONS FOR CHILD SEXUAL ABUSE CLAIMS

*Mackenzie F. Reiber**

I. INTRODUCTION.....	148
II. BACKGROUND	150
A. <i>The Development of Ohio’s Civil Statute of Limitations for CSA Claims</i>	150
B. <i>The Controversial History of Dissociative Amnesia</i>	154
III. CIVIL STATUTE OF LIMITATIONS FOR CSA CLAIMS IN OTHER STATES.....	158
A. <i>States That Abolished the Civil Statute of Limitations for CSA Claims</i>	158
1. Delaware	158
2. Maine	160
B. <i>States That Implement Longer Limitations Periods</i>	161
1. New York.....	161
2. Rhode Island	162
C. <i>States That Employ a Shorter Limitations Period for Civil CSA Claims</i>	163
1. Indiana	163
2. Alabama.....	164
IV. PROPOSED CHANGES TO OHIO’S CIVIL STATUTE OF LIMITATIONS	165
A. <i>Recent Legislation that Proposes Amendments to Ohio’s Civil Statute of Limitations</i>	165
1. House Bill 266 (HB 266)	165
2. House Bill 709 (HB 709).....	166
B. <i>Proposed Changes to Ohio’s Civil Statute of Limitations</i>	167
1. Survivors of CSA Do Not Come Forward Until Years After Abuse Occurred.	167

* Esq.; J.D., 2023; B.S. Criminal Justice & Criminology, Psychological Science, 2019. I want to thank my parents, Robbie and Melissa Reiber, and my brother, Dr. Jordan Reiber, for their constant support on this incredible and often intimidating journey to becoming the first lawyer in our family. I also want to thank my grandparents; my Comment Editor, Justin T. Elkin, Esq.; my friends; and my Faculty Advisor, Ericka Curran, who encouraged and helped me each step of the way.

2. Elimination of the Civil Statute of Limitations Will Not Overburden Courts.....	167
3. Perpetrator’s Constitutional Rights Will Not Be Violated.....	168
V. CONCLUSION.....	169

I. INTRODUCTION

For over 20 years, Chris Graham experienced flashbacks of being chased, but he could not recall who he was running from or why he was running.¹ The recurring flashbacks haunted his dreams, negatively affected his relationship with his wife, caused seizures, and eventually led to his hospitalization in March 2020.² Shortly after this hospitalization, Mr. Graham pursued counseling and Eye Movement Desensitization and Reprocessing (“EMDR”) psychotherapy, which not only helped him recall the source of his flashbacks, but also began Mr. Graham’s recovery from Post-Traumatic Stress Disorder (“PTSD”) associated with the trauma.³

Through these therapy sessions, Mr. Graham recalled being sexually assaulted by a trusted and admired Catholic priest, Raymond Lavelle, at the age of 14.⁴ On the day of the assault, the Catholic priest gave Mr. Graham leftover sacramental wine usually shared by the priests at the end of mass.⁵ The Catholic priest then led Mr. Graham into the sacristy, or the changing room, and sexually assaulted the young boy.⁶ Afterwards, Mr. Graham fled from the room, and the Catholic priest chased him, ordering him back into the sacristy.⁷

Mr. Graham cannot seek compensation for the trauma he endured because of Ohio’s civil statute of limitations for child sexual abuse (“CSA”) claims.⁸ In Ohio, survivors of CSA must file a civil lawsuit by the age of 30 or their claim is barred by the statute of limitations.⁹ Since Mr. Graham did not recover the memories of the sexual assault until he was 38 years old, his

¹ Danae King, *‘There’s No Escape’: Memories of Being Raped by Catholic Priest Haunt Columbus Man*, COLUMBUS DISPATCH, <https://www.dispatch.com/in-depth/news/2021/09/08/columbus-man-raped-catholic-priest-child-haunted-memories/7504888002/> (Sept. 12, 2021, 2:13 PM).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Kevin Landers, *Rape Survivor Working To Change Ohio Law on Statute of Limitations*, 10 WBNS (Oct. 5, 2021, 5:43 PM), <https://www.10tv.com/article/news/local/survivor-working-to-change-ohio-law-on-statute-of-limitations/530-4ad55f16-0bef-47b7-8903-6df6f34658ef>.

⁹ Morgan Trau, *Child Sex Abuse Survivors Beg Ohio Lawmakers To Eliminate Statute of Limitations*, OHIO CAP. J. (Oct. 24, 2022, 5:00 AM), <https://ohiocapitaljournal.com/2022/10/24/child-sex-abuse-survivors-beg-ohio-lawmakers-to-eliminate-statute-of-limitations/>.

claim is barred.¹⁰ However, this has not stopped Mr. Graham from imploring state legislators to reform Ohio's civil statute of limitations for CSA claims.¹¹

Mr. Graham's story is unfortunately not uncommon. While the true impact of CSA in the United States is unknown because the incidents are generally unreported, it is estimated that approximately 42 million people have experienced some form of CSA.¹² Specifically, 1 in 4 females and 1 in 16 males have reported experiencing sexual abuse at some point in their childhood.¹³ Additionally, over 90% of CSA victims are sexually abused by someone known to them.¹⁴ While CSA is defined multiple ways, it is most commonly known as "any interaction between a child and an adult (or another child) in which the child is used for the sexual stimulation of the perpetrator or an observer."¹⁵ Thus, this form of abuse includes both touching and non-touching behaviors.¹⁶

As Mr. Graham's story illustrates, there are many long-lasting psychological effects of CSA. For example, survivors of CSA may experience PTSD, depression, personality disorders, obsessive compulsive disorders, anxiety, low self-esteem, and dissociation.¹⁷ Survivors of CSA are also at an increased risk of substance abuse, eating disorders, self-harm, and suicidal ideation.¹⁸

Additionally, survivors of CSA, like Mr. Graham, may experience dissociative amnesia.¹⁹ Dissociative amnesia, also known as memory repression, is "full or partial memory loss that results from having survived a trauma."²⁰ Such memory loss can last for a few seconds or may last for several years.²¹ However, with treatment, such as cognitive behavioral therapy or psychotherapy, survivors of CSA can recover those memories.²²

To properly account for dissociative amnesia in CSA cases, Ohio

¹⁰ Landers, *supra* note 8.

¹¹ *Id.*; King, *supra* note 1.

¹² *Impact of Child Sexual Abuse*, CDC, <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html> (last visited Sept. 20, 2022).

¹³ *Id.*

¹⁴ *Fast Facts: Preventing Child Sexual Abuse*, CDC, <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html> (last visited Sept. 10, 2023).

¹⁵ *Sexual Abuse*, NAT'L. CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/sexual-abuse/> (last visited Sept. 10, 2023).

¹⁶ *Id.*

¹⁷ Ron Roberts et al., *The Effects of Child Sexual Abuse in Later Family Life: Mental Health, Parenting and Adjustment of Offspring*, 28 CHILD ABUSE & NEGLECT 525, 526 (2004).

¹⁸ *Id.*; see also John N. Briere & Diana M. Elliott, *Immediate Long-Term Impacts of Child Sexual Abuse*, 4 THE FUTURE OF CHILD. 54, 60–61 (1994).

¹⁹ Molly R. Wolf & Thomas H. Nochajski, *Child Sexual Abuse Survivors with Dissociative Amnesia: What's the Difference?*, 22 J. OF CHILD SEXUAL ABUSE 462, 462 (2013).

²⁰ *Id.* (internal citation omitted).

²¹ *Dissociative Amnesia DSM-5 300.12 (F44.0)*, THERAVIVE, [https://www.theravive.com/therapedia/dissociative-amnesia-dsm--5-300.12-\(f44.0\)](https://www.theravive.com/therapedia/dissociative-amnesia-dsm--5-300.12-(f44.0)) (last visited Sept. 12, 2023).

²² *Dissociative Amnesia*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/diseases/9789-dissociative-amnesia> (last visited Sept. 12, 2023).

should abolish the civil statute of limitations for CSA claims because survivors of CSA generally recover memories and come forward with allegations well past the limitations period; courts in states that have eliminated the civil statute of limitations for CSA claims do not become overwhelmed by hearing these claims several years past the date of the abuse; and the perpetrator's constitutional rights are not violated by abolishing the statute of limitations.²³ Thus, Part II of this Comment not only discusses a brief history of Ohio's acceptance and quick disregard of the discovery rule in CSA cases, but also explores the history of dissociative amnesia and the main controversies surrounding the diagnosis. In Part III, this Comment analyzes the civil statute of limitations for CSA claims in six states by examining states that have eliminated the civil statute of limitations for CSA claims, states that have adopted a longer limitations period and implemented a discovery rule, and states that have a harsher limitations period than Ohio. Part IV of this Comment critiques current legislation regarding the civil statute of limitations for CSA claims and proposes that Ohio's civil statute of limitations for CSA claims should be abolished by examining several important policy considerations. Finally, Part V concludes this Comment.

II. BACKGROUND

A. *The Development of Ohio's Civil Statute of Limitations for CSA Claims*

Ohio's current civil statute of limitations for CSA claims is governed by R.C. § 2305.111.²⁴ Prior to the enactment of R.C. § 2305.111, the Ohio General Assembly provided no specific civil statute of limitations for CSA claims.²⁵ Thus, the Ohio Supreme Court case, *Doe v. First United Methodist Church*, determined not only which statute of limitations applied to CSA claims, but also when the claim accrued.²⁶

In *First United Methodist Church*, an anonymous appellant filed a complaint against Timothy S. Masten, First United Methodist Church, and the Elyria City School District.²⁷ From 1981–1984, Masten sexually abused the minor appellant in both church and school.²⁸ After leaving high school in 1984, the appellant began experiencing severe emotional trauma for which he sought psychological counselling.²⁹ In September 1989, after several counselling sessions, the appellant established that his emotional trauma

²³ Timothy J. Muyano, *A Not So Retro Problem: Extending Statutes of Limitations To Hold Institutions Responsible for Child Sexual Abuse Accountable Under State Constitutions*, 63 VILL. L. REV. 47, 56–57 (2018).

²⁴ OHIO REV. CODE ANN. § 2305.111.

²⁵ *Pratte v. Stewart*, 929 N.E.2d 415, 419 (Ohio 2010).

²⁶ *Id.*

²⁷ *Doe v. First United Methodist Church*, 629 N.E.2d 402, 404 (Ohio 1994).

²⁸ *Id.*

²⁹ *Id.*

stemmed from the sexual abuse by Masten.³⁰ The appellant then filed a complaint in July 1991 that sought compensation for the sexual abuse by Masten, for the school district's negligence in hiring Masten, and for First United Methodist Church's negligent or willful conduct in "failing to protect appellant from Masten's sexual [abuse]."³¹ In response, the school district filed a Civ. R. 12(B)(6) ("12(B)(6)") motion to dismiss, arguing that the appellant's claim was time-barred under both R.C. § 2305.10 and R.C. § 2305.111.³²

The trial court, in November 1991, granted the school district's 12(B)(6) motion to dismiss, finding that the statute of limitations barred the appellant's claim.³³ While the trial court found that the appellant's claim did not accrue until he reached the age of majority, or 18 years old, the appellant failed to file a claim within the time frames set forth in R.C. § 2305.10 and R.C. § 2305.111.³⁴ Further, the trial court did not find the discovery rule applicable, meaning that the appellant's discovery of the abuse during counselling in 1989 did not stop the statute of limitations from running.³⁵ In February 1992, the trial court also granted Masten's and First United Methodist Church's motions for summary judgment.³⁶

The appellant appealed to the court of appeals, who affirmed the trial court's decision.³⁷ The court of appeals held that the appellant's case against Masten was governed by the one-year statute of limitations in R.C. § 2305.111 and that, even if a discovery rule applied, the claim was still not timely filed.³⁸ Additionally, the court of appeals determined that the cause of action against First United Methodist Church was governed by R.C. § 2305.10.³⁹

The case then went to the Ohio Supreme Court, who were tasked with determining not only the applicable statute of limitations, but also when the claim accrued.⁴⁰ First, the Ohio Supreme Court held that the CSA claims against Masten were subject to the one-year statute of limitations in R.C. § 2305.111 and that the CSA claims against the church and school district were subject to the statute of limitations in R.C. § 2305.10.⁴¹ Second, the Ohio Supreme Court found that the discovery rule did not apply here because, although the appellant did not discover the full extent of the emotional trauma

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 404–05.

³⁴ *Id.*

³⁵ *Id.* at 405.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 406.

³⁹ *Id.*

⁴⁰ *See generally id.* at 406–08.

⁴¹ *Id.* at 407–08.

until 1989, he knew about the sexual abuse when he turned 18 years old.⁴² Thus, the Ohio Supreme Court affirmed the decision of the court of appeals.⁴³

Under the decision in *First United Methodist Church*, survivors of CSA had only one year after reaching the age of majority to file a claim, or it was barred by the statute of limitations under R.C. § 2305.111.⁴⁴ While *First United Methodist Church* seemingly left open whether the discovery rule applied to CSA claims, *Ault v. Jasko* determined that R.C. § 2305.111 did provide a discovery rule.⁴⁵ In *Ault*, 29-year-old Kathy Ault alleged that her father, John Jasko sexually abused her beginning at age 12.⁴⁶ Jasko filed a 12(B)(6) motion to dismiss, arguing that Ault's claim was barred by the statute of limitations.⁴⁷ Ault responded that her claim was not barred because of the discovery rule.⁴⁸ In essence, the discovery rule provides that "a cause of action does not arise until the plaintiff knows, or by exercise of reasonable diligence should have known, that he or she has been injured by the conduct of [the perpetrator]."⁴⁹ Since Ault did not recover memories of the abuse until October 1990, several years after Ault reached the age of majority, she argued that the statute of limitations did not begin tolling until 1990.⁵⁰

Ault's case was an issue of first impression for the Ohio Supreme Court.⁵¹ After extensive discussion of other jurisdictions' application of the discovery rule in CSA cases, the Ohio Supreme Court held that the discovery rule did apply to Ault's case.⁵² Specifically, the court held that "the discovery rule applies in Ohio to toll the statute of limitations where a victim of childhood sexual abuse represses memories of that abuse until a later time."⁵³ Thus, since the one-year statute of limitations would not start running until the memories of the abuse were recalled, survivors of CSA could bring their claims several years past the strict timeframe in R.C. § 2305.111.⁵⁴

In 2006, the General Assembly amended R.C. § 2305.111 to provide the current civil statute of limitations for CSA claims.⁵⁵ According to R.C. § 2305.111(C), a civil cause of action for CSA accrues when the survivor of CSA reaches the age of majority, or 18 years old.⁵⁶ The survivor of CSA must

⁴² *Id.* at 408–10.

⁴³ *Id.* at 410.

⁴⁴ *Id.* at 403, 410.

⁴⁵ *Ault v. Jasko*, 637 N.E.2d 870, 871 (Ohio 1994).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 871; see also Christopher Yingling, *The Ohio Supreme Court Sets the Statute of Limitations and Adopts the Discovery Rule for Childhood Sexual Abuse Actions: Now It Is Time for Legislative Action!*, 43 CLEV. ST. L. REV. 499, 514 (1995) (internal citation omitted).

⁵⁰ *Ault*, 637 N.E.2d at 870.

⁵¹ *Id.* at 871.

⁵² See generally *id.* at 871–72.

⁵³ *Id.* at 873.

⁵⁴ *Id.*

⁵⁵ *Pratte v. Stewart*, 929 N.E.2d 415, 420 (Ohio 2010).

⁵⁶ OHIO REV. CODE ANN. § 2305.111(C).

bring a claim within 12 years after reaching the age of majority (i.e., 30 years old), or their CSA claim is barred by the statute of limitations.⁵⁷

The discovery rule continued to apply to CSA cases until 2010, when the Ohio Supreme Court decided *Pratte v. Stewart*.⁵⁸ In *Pratte*, 33-year-old Pratte alleged that she was sexually abused by Stewart on three separate occasions with the last instance occurring in 1984.⁵⁹ She repressed memories of the abuse until April 2007, when a news event triggered the recovery of the memories.⁶⁰ In response to the complaint, Stewart filed a 12(B)(6) motion to dismiss, arguing that, since Pratte turned 30 in 2004 and did not file a claim until 2008, her claim was time-barred by R.C. § 2305.111(C).⁶¹ Pratte countered that, per *Ault*, the discovery rule tolled the statute of limitations until she recovered her memories in April 2007.⁶²

However, the trial court granted Stewart's 12(B)(6) motion to dismiss.⁶³ According to the trial court, the 12-year timeframe in R.C. § 2305.111(C) was intended by the legislature to account for the recovery of repressed memories.⁶⁴ Thus, the trial court essentially stated that if a survivor of CSA did not recover memories of the trauma by the time they turned 30, their claim was time-barred by R.C. § 2305.111(C).⁶⁵ The Second District Court of Appeals agreed, affirming the trial court's decision.⁶⁶

The Ohio Supreme Court then accepted a discretionary appeal to determine whether R.C. § 2305.111(C) "contain[s] a tolling provision for repressed memories of childhood sexual abuse" and whether "[t]he discovery rule . . . appl[ies] to toll the statute of limitations while a victim of childhood sexual abuse represses memories of that abuse."⁶⁷ First, the Court determined that R.C. § 2305.111(C) does not contain a tolling provision for repressed memories of CSA.⁶⁸ After a lengthy discussion of statutory interpretation, the court determined that the plain language of R.C. § 2305.111(C) unambiguously provided a tolling provision for situations involving fraudulent concealment of CSA, but did not provide a tolling provision for situations involving repressed memories.⁶⁹ As the Court reasoned, the legislature, through the writing of the statute, simply chose not to include a tolling provision for repressed memories, and the Court refused to

⁵⁷ *Id.* § 2305.11(C).

⁵⁸ *See generally Stewart*, 929 N.E.2d 415.

⁵⁹ *Id.* at 418.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 424.

⁶⁹ *Id.*

“contravene established axioms of statutory construction by inserting words in the statute that were not used by the General Assembly.”⁷⁰

Second, the Ohio Supreme Court also rejected applying the discovery rule to CSA claims.⁷¹ In reaching this decision, the Court looked again to legislative intent, finding that the legislature’s creation of a fixed time period to file a claim indicated their recognition of the role of repressed memories in CSA claims.⁷² Further, the Court rejected *Ault*’s applicability to *Pratte*.⁷³ As the Court reasoned, *Ault* was an “equitable rule of law created at a time when the legislature had not enacted a limitations period for claims of childhood sexual abuse and this court had adopted a one-year limitations period.”⁷⁴ By creating a longer limitations period, the legislature indicated not only that they took repressed memories into account, but also utilized the *Ault* decision to guide their amendments to R.C. § 2305.111(C).⁷⁵ While the Court recognized that some people would recover memories after the 12-year timeframe had passed, they again declined to step into the role of the legislature by rewriting the law because it would violate the separation of powers.⁷⁶

B. *The Controversial History of Dissociative Amnesia*

Dissociative amnesia, commonly referred to as repressed memory, traces its history to Sigmund Freud who, in the late nineteenth century, established the infamous theory of psychoanalysis.⁷⁷ After hearing the case of Anna O., a patient who suffered from debilitating symptoms that only improved upon memory recovery in therapy, Freud began developing the theory of memory repression.⁷⁸ Specifically, Freud articulated that memory repression is an involuntary defense mechanism the mind employs to cope with traumatic experiences and further stated that these memories could only be recovered through therapeutic devices.⁷⁹

The theory of memory repression gained massive popularity in the 1990s, becoming “endemic in therapeutic circles.”⁸⁰ When patients presented with mood or eating disorders, psychologists assumed that these symptoms were the result of repressed memories and employed therapy techniques, such

⁷⁰ *Id.*

⁷¹ *Id.* at 425.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Henry Otgaar et al., *The Return of the Repressed: the Persistent and Problematic Claims of Long-Forgotten Trauma*, 14 PERSPECTIVES ON PSYCH. SCI. 1072, 1073 (2019); *Who Was Sigmund Freud?*, FREUD MUSEUM LONDON, <https://www.freud.org.uk/education/resources/who-was-sigmund-freud/> (last visited Sept. 22, 2023).

⁷⁸ Crystal Raypole, *What’s the Deal with Repressed Memories?*, HEALTHLINE (Dec. 12, 2019), <https://www.healthline.com/health/repressed-memories>.

⁷⁹ Otgaar et al., *supra* note 77, at 1073.

⁸⁰ *Id.*; Raypole, *supra* note 78.

as hypnosis and dream interpretation, to recover those memories.⁸¹ Relying on those memories, psychology patients began filing criminal and civil actions against their perpetrators years after the alleged abuse occurred.⁸²

One famous example is Eileen Franklin, who, after 20 years, recovered memories of watching her father sexually assault and murder her childhood best friend, Susan Nason.⁸³ After returning a pair of shoes to a neighborhood friend, Susan seemingly disappeared.⁸⁴ Ten weeks later, Susan's body was found at a nearby reservoir with her skull smashed.⁸⁵ Her death remained a mystery for several years until Eileen, while playing with her young daughter, allegedly recovered memories of the day Susan disappeared.⁸⁶

In 1990, prosecutors relied on Eileen's recovered memories to try George Franklin, Eileen's father, for Susan's murder.⁸⁷ At his trial, Eileen testified against her father, stating that she recalled seeing her father sexually assault Susan and then bludgeon Susan with a rock.⁸⁸ She also stated that he threatened to kill her if she told anyone about Susan's murder.⁸⁹ Further, prosecutors painted a picture for the jury that repressed memories could lie dormant in the brain until they are suddenly recovered by random stimuli, such as what happened to Eileen.⁹⁰

There were, however, several inconsistencies in Eileen's story that made her an incredible witness.⁹¹ Not only did Eileen's account closely match several news reports on Susan's murder, but she also changed her story multiple times.⁹² For example, when the defense offered evidence that Eileen had revealed details of the murder to numerous people while under hypnosis, she changed her story by denying ever being under hypnosis.⁹³

These apparent inconsistencies did not sway the jury, which, after deliberating for less than a day, convicted George Franklin of Susan's

⁸¹ Otgaar et al., *supra* note 77, at 1073.

⁸² *Id.*

⁸³ Dusica Sue Malesevic, 'A House of Hell': New Docuseries Examines the Trial of Man Who Was Accused by His Daughter of Molesting and Murdering Her Best Friend, 8, in 1969 - A Crime She Remembered 20 Years Later After Suppressing the Memory, DAILYMAIL.COM (Oct. 15, 2021, 8:27 AM), <https://www.dailymail.co.uk/news/article-10085171/Buried-looks-George-Franklins-conviction-based-repressed-memories-daughter-Eileen.html>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Nick Schager, *Her Repressed Memory Got Him a Life Sentence for Murder. Was It Real?*, THE DAILY BEAST (Oct. 12, 2021, 5:00 AM), <https://www.thedailybeast.com/her-repressed-memory-got-him-a-life-sentence-for-murder-was-it-real>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

murder.⁹⁴ He was sentenced to life imprisonment, but his conviction for Susan's murder was later reversed in 1995 and he was never retried.⁹⁵ Eileen then began recovering more memories of watching her father sexually assault and murder Veronica Casico, but DNA evidence ultimately cleared him.⁹⁶ George Franklin died in 2016, and Eileen now lives in a new state under a new identity, claiming that the recovery of these memories ruined her life and her relationship with her family.⁹⁷

Eileen's story about repressed memories led researchers like Dr. Elizabeth Loftus, a pioneer in the study of memory and a defense witness in George Franklin's trial, to deeply examine whether therapeutic devices, such as hypnosis, can recover true memories.⁹⁸ Through her research, Dr. Loftus discovered that hypnosis and dream interpretation were suggestive therapy mechanisms that could potentially plant false autobiographical memories into the minds of patients.⁹⁹ As a result, the belief in repressed memories became a controversial topic in psychology, and instigated the "Memory Wars" that lasted throughout the 1990s.¹⁰⁰

Today, researchers continue to study repressed memories, but now link them with a form of dissociation, known as dissociative amnesia.¹⁰¹ Although not all survivors of CSA experience dissociative amnesia, several psychological studies report the occurrence of dissociative amnesia in CSA survivors.¹⁰² The *Diagnostic and Statistical Manual of Mental Disorders* ("DSM-5") defines dissociative amnesia as:

- (a) an inability to recall important autobiographical information, usually of a traumatic or stressful nature, that is inconsistent with ordinary forgetting;
- (b) that causes significant distress in social, occupational or other important area of functioning;
- (c) not attributable to psychological effects of substance (e.g., alcohol or drugs), neurological, or medical condition; and
- (d) not better explained by other psychological disturbances such as (among others) posttraumatic stress disorder, neurocognitive disorders,

⁹⁴ Malesevic, *supra* note 83.

⁹⁵ *Id.*

⁹⁶ Schager, *supra* note 90.

⁹⁷ Malesevic, *supra* note 83.

⁹⁸ Alan Jern, *A New Docuseries Explores the Reality of Memory Repression*, PSYCHOLOGY TODAY (Oct. 7, 2021), <https://www.psychologytoday.com/us/blog/overthinking-tv/202110/new-docuseries-explores-the-reality-memory-repression>; Otgaar et al., *supra* note 77, at 1073.

⁹⁹ Scott Douglas Jacobson, *Professor Elizabeth Loftus, Do Justice and Let the Sky Fall*, THE GOOD MEN PROJECT (Aug. 20, 2017), <https://goodmenproject.com/featured-content/elizabeth-loftus-1-sjbn/>; Otgaar et al., *supra* note 77, at 1073; Malesevic, *supra* note 83.

¹⁰⁰ See generally Otgaar et al., *supra* note 77, at 1073–78; Malesevic, *supra* note 83.

¹⁰¹ Ivan Mangiulli et al., *A Critical Review of Case Studies on Dissociative Amnesia*, 10 CLINICAL PSYCH. SCI. 191, 191–92 (2022).

¹⁰² Wolf & Nochajski, *supra* note 19, at 463.

traumatic brain injury and factitious disorder.¹⁰³

The DSM-5 further categorizes dissociative amnesia into three forms: (1) localized, (2) selective, and (3) generalized.¹⁰⁴ Localized dissociative amnesia, the most prevalent type of dissociative amnesia, is the forgetting of a specific time period; whereas selective dissociative amnesia is the recollection of some, but not all, memories of a traumatic event.¹⁰⁵ In the context of CSA, localized dissociative amnesia would be memory loss of an occurrence of sexual abuse, and selective dissociative amnesia would be remembering only some instances of the sexual abuse.¹⁰⁶

Dissociative amnesia may last for several hours, days, or even years.¹⁰⁷ While memories of traumatic experiences may be organically recovered after several years, these memories often suddenly return, sometimes through flashbacks.¹⁰⁸ When these memories do return, survivors of CSA often experience distress and are at an increased risk of developing depression, anxiety, and self-destructive behaviors.¹⁰⁹ Thus, to help cope with these negative psychological symptoms, survivors of CSA often seek therapy and may sometimes benefit from medicinal interventions.¹¹⁰

While the actual cause of dissociative amnesia is still unclear, researchers have identified several risk factors for developing dissociative amnesia.¹¹¹ For example, the younger the victim of CSA is at the onset of the abuse, the more likely they are to develop dissociative amnesia.¹¹² Further, risk factors such as the relationship between the victim and perpetrator, as well as the frequency, duration, and severity of CSA, are positively correlated with the development of dissociative amnesia.¹¹³

However, as the “Memory Wars” persist through the 21st century, some researchers express concern and criticism that dissociative amnesia is just a camouflage for repressed memory theory.¹¹⁴ Since the true existence of memory repression is hard to prove, this Comment does not opine as to whether memory repression is a valid theory. Instead, this Comment merely seeks to examine whether state legislation relating to civil CSA claims adequately accounts for situations in which dissociative amnesia may be

¹⁰³ Mangiulli et al., *supra* note 101, at 192 (internal quotations omitted); AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STAT. MANUAL OF MENTAL DISORDERS 298 (5th ed. 2013).

¹⁰⁴ Mangiulli et al., *supra* note 101, at 192; Otgaar et al., *supra* note 77, at 1079.

¹⁰⁵ Mangiulli et al., *supra* note 101, at 192; Otgaar et al., *supra* note 77, at 1079.

¹⁰⁶ Mangiulli et al., *supra* note 101, at 192; Otgaar et al., *supra* note 77, at 1079.

¹⁰⁷ Wolf & Nochajski, *supra* note 19, at 471; Mangiulli et al., *supra* note 101, at 192.

¹⁰⁸ *Dissociative Amnesia*, *supra* note 22; Mangiulli et al., *supra* note 101, at 192.

¹⁰⁹ Mangiulli et al., *supra* note 101, at 192; Wolf & Nochajski, *supra* note 19, at 471.

¹¹⁰ *Dissociative Amnesia*, *supra* note 22; Mangiulli et al., *supra* note 101, at 192.

¹¹¹ Wolf & Nochajski, *supra* note 20, at 463.

¹¹² *Id.* at 463–464.

¹¹³ *Id.* at 465–467.

¹¹⁴ *See generally* Otgaar et al., *supra* note 77, at 1079.

involved.

III. CIVIL STATUTE OF LIMITATIONS FOR CSA CLAIMS IN OTHER STATES

On September 16, 2022, President Biden signed the Eliminating Limits to Justice for Child Sex Abuse Victims Act into law.¹¹⁵ This Act, passed by voice vote in the House of Representatives and by unanimous consent in the Senate, eliminates the federal statute of limitations for CSA claims.¹¹⁶ Prior to the passing of this law, CSA survivors had only ten years past the date of the offense to bring a federal cause of action.¹¹⁷ This law does not apply retroactively, meaning that the recent abolition of the statute of limitations applies only to claims not yet barred or not yet litigated.¹¹⁸ Additionally, this law does not eradicate the state-level civil statute of limitations currently in place for CSA claims.¹¹⁹ Thus, state-level civil CSA claims continue to be regulated by whatever limitations provisions are in place.

A. *States That Abolished the Civil Statute of Limitations for CSA Claims*

The recent passage of this federal law calls into question whether states should follow suit and abolish the civil statute of limitations for CSA claims. Several states, including Delaware and Vermont, have already abolished the civil statute of limitations for CSA claims.¹²⁰ By doing so, these states not only ensure that survivors of CSA can seek compensation regardless of the age they come forward with allegations of abuse, but also considers situations where dissociative amnesia may account for the delay in bringing a claim.

1. Delaware

Prior to amending its statute of limitations, civil CSA claims filed in Delaware were subject to a two-year statute of limitations, the same

¹¹⁵ Melissa L. Jampol et al., “*Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022*” *Abolishes Statute of Limitations for Federal Civil Causes of Action Relating to Child Sex Abuse*, NAT’L L. REV. (Oct. 11, 2022), <https://www.natlawreview.com/article/eliminating-limits-to-justice-child-sex-abuse-victims-act-2022-abolishes-statute>.

¹¹⁶ Chloe Folmar, *Biden Signs Bill Eliminating Civil Statute of Limitations for Child Sex Abuse Victims*, THE HILL (Sept. 17, 2022, 4:24 PM), <https://thehill.com/homenews/administration/3647958-biden-signs-bill-eliminating-civil-statute-of-limitations-for-child-sex-abuse-victims/>.

¹¹⁷ Konrad Kircher, *Biden Signs New Law Eliminating Limits to Justice for Child Sex Abuse Victims*, RITTGERS RITTGERS & NAKAJIMA (Sept. 21, 2022), <https://www.rittgers.com/blog/2022/09/biden-signs-new-law-eliminating-limits-to-justice-for-child-sex-abuse-victims/>.

¹¹⁸ *Id.*

¹¹⁹ Jampol et al., *supra* note 115.

¹²⁰ *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, CHILD USA, <https://childusa.org/2022sol/> (Dec. 31, 2022).

limitations period for other personal injury claims.¹²¹ This meant that survivors of CSA had only two years from the date of the injury to file a claim.¹²² There was no tolling provision to stop the limitations time clock from running until the victim reached the age of majority.¹²³ Thus, an eight-year-old victim had to file a civil CSA claim before they turned ten years old or their claim was barred.¹²⁴

In 2007, Delaware enacted the Delaware Child Victim's Act ("CVA").¹²⁵ This law provides in relevant part that a civil CSA claim may be filed "at any time following the commission of the act or acts that constituted the sexual abuse."¹²⁶ Further, this law opened a two-year window for survivors of CSA to file civil claims that were previously barred by the statute of limitations.¹²⁷

As indicated by Thomas S. Neuberger, a Delaware attorney and specialist in CSA cases, Delaware's enactment of the CVA gives "past survivors . . . two years to come into court to prove their case, and future survivors were given the time necessary to come to grips with their horrors and make an informed decision on whether to reopen their wounds and seek justice."¹²⁸ Through this Act, approximately 900 CSA survivors collectively received \$123 million in compensation for sexual abuse perpetrated by pediatrician Earl Bradley.¹²⁹ Additionally, under the CVA, over 150 other survivors of CSA received \$110 million in compensation from several Catholic churches after filing claims that they were sexually abused by Catholic priests.¹³⁰

While this Act does not cure the numerous other obstacles that survivors must face when filing civil CSA claims, it does take steps to ensure that survivors of CSA can seek compensation.¹³¹ Additionally, this law properly accounts for survivors of CSA who may experience dissociative amnesia and does not penalize them for not recovering their memories sooner. Therefore, Ohio could reasonably follow suit and abolish its civil statute of limitations for CSA claims as well.

¹²¹ *Sheehan v. Oblates of St. Francis de Sales*, 15 A.3d 1247, 1251 (Del. 2011).

¹²² *Id.*

¹²³ Marci A. Hamilton, *Child Sex Abuse Statutes of Limitation Reform from 2002 to 2019*, CHILD USA (May 5, 2020), <https://childusa.org/wp-content/uploads/2020/05/CHILD-USA-2019-Annual-SOL-Report-May-2020.pdf>.

¹²⁴ Thomas S. Neuberger, *Delaware's Child Victims Act Was a Success Despite the Odds*, DEL. ONLINE, (July 27, 2014, 12:00 AM), <https://www.delawareonline.com/story/opinion/contributors/2014/07/26/child-victims-act-success-despite-odds/13215981/>.

¹²⁵ *Sheehan*, 15 A.3d at 1251.

¹²⁶ DEL. CODE ANN. tit. 10, § 8145 (2007).

¹²⁷ *Id.*; *Sheehan*, 15 A.3d at 1252.

¹²⁸ Neuberger, *supra* note 124.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Delaware Child Victim's Act: A Resounded Success but More Still Needs To Be Done*, JACOBS & CRUMPLAR (Aug. 13, 2014), https://www.jcdelaw.com/news_releases/delawares-child-victims-act/.

2. Maine

Like Delaware, Maine's former civil statute of limitations gave survivors of CSA a short window to file a civil lawsuit.¹³² Before amending its statute, section 752-C, Maine gave survivors of CSA "12 years after the cause of action accrues" to file a claim.¹³³ Unlike Delaware, Maine also implemented a discovery rule, accounting for situations in which survivors of CSA may have experienced dissociative amnesia.¹³⁴ Specifically, section 752-C provided that a survivor of CSA could file a claim "within 6 years of the time the person discovers or reasonably should have discovered the harm"¹³⁵

In 2000, Maine amended section 752-C to abolish the civil statute of limitations for CSA claims and provided that these claims could be raised at any time.¹³⁶ At that time, section 752-C did not apply retroactively, meaning that survivors of CSA whose claims were previously barred by the statute of limitations could not come forward and sue their abusers under the 2000 amendment.¹³⁷ However, that changed in 2021, when Maine again amended section 752-C to allow for retroactive application, and gave CSA cases previously barred by the statute of limitations a chance to be litigated.¹³⁸

Since the 2021 amendments, 13 cases previously barred by the statute of limitations have been filed, most of which relate to sexual abuse in Catholic churches and schools in Maine.¹³⁹ However, in early 2023, the Roman Catholic Diocese of Portland commenced an action challenging the constitutionality of the retroactive application and the full elimination of the statute of limitations.¹⁴⁰ As the Roman Catholic Diocese of Portland argued in their motion, the prior law gave survivors of CSA ample time to file their claim, and protected the Diocese from distributing millions of dollars for claims that have been time-barred for several years.¹⁴¹

The Roman Catholic Diocese of Portland's argument against retroactivity of the civil statute of limitations is not new. In fact, scholars and United States Supreme Court Justices alike have suggested that retroactive application of a civil statute of limitations for CSA claims is

¹³² See generally *Nuccio v. Nuccio*, 673 A.2d 1331 (Me. 1996).

¹³³ ME. STAT. tit. 14, § 752-C (1995).

¹³⁴ *Id.* § 752-C.

¹³⁵ *Id.*; see also *Nuccio*, 673 A.2d at 1335.

¹³⁶ § 752-C; see also *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, supra note 120.

¹³⁷ David Sharp, *Diocese Challenges Maine Law Allowing Older Sex Abuse Claims*, THE ASSOCIATED PRESS (Jan. 5, 2023, 2:29 PM), <https://apnews.com/article/maine-state-government-crime-religion-lawsuits-834c4eea438e3e7e8323331831680e38>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*; see also Muri Assunção, *Portland Diocese Challenges Maine Law Enabling Old Child Sex Abuse Victims To Sue*, N.Y. DAILY NEWS (Jan. 5, 2023), https://news.yahoo.com/portland-diocese-challenges-maine-law-035000134.html?fr=sycsrp_catchall.

unconstitutional.¹⁴² For example, it has been argued that retroactive application of a statute that abolishes the limitations period for CSA claims might violate the ex post facto provisions in the United States Constitution because it would create a criminal, or penal, effect in a civil case.¹⁴³

While the results of the Roman Catholic Diocese of Portland's argument remain to be seen, creating such sweeping freedoms to file claims may not be in Ohio's best interest. Instead, it seems that adopting a model like Delaware, which provides a short revival window for claims that were previously time-barred, might be better for Ohio. Additionally, Delaware's model seems to protect the constitutional rights of both survivors of CSA and the alleged perpetrators. A revival window further seems to prevent the penal effect that full retroactive application of a civil statute of limitations creates. Therefore, if Ohio wished to pursue full abolition of the statute of limitations for CSA claims, Ohio should create a revival window, preferably longer than Delaware's, to give survivors of CSA ample time to file claims that were previously barred. Additionally, adopting Delaware's model would ensure survivors of CSA that experienced dissociative amnesia would still be able to bring a claim.

B. States That Implement Longer Limitations Periods

Other states, such as New York and Rhode Island, implement a longer limitations period for CSA claims.¹⁴⁴ Further, these states also employ a discovery rule to account for situations where survivors of CSA may have repressed memories of the trauma.¹⁴⁵ Although these states have not completely abolished the civil statute of limitations for CSA claims like Delaware and Maine, these states give more time than Ohio to file a CSA claim.¹⁴⁶

1. New York

New York's previous statute of limitations for civil CSA claims was generally unfavorable to the survivors of CSA. For example, survivors of CSA had up to five years past the age of majority, or 23 years old, to file a civil CSA claim.¹⁴⁷ However, in 2019, New York, like Delaware, passed its own version of the CVA, which extended the timeframe in which survivors

¹⁴² See generally Erin Khorram, *Crossing the Limit Line: Sexual Abuse and Whether Retroactive Application of Civil Statutes of Limitation Are Legal*, 16 U.C. DAVIS J. JUV. L. & POL'Y 391, 423–26 (2012).

¹⁴³ *Id.* at 423.

¹⁴⁴ See *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, *supra* note 120.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *What Is the Child Victims Act?* N.Y.C. BAR, <https://www.nycbar.org/get-legal-help/article/personal-injury-and-accidents/new-york-child-victims-act/> (Aug. 2020).

of CSA could file a claim.¹⁴⁸ Under these new changes, survivors of CSA have until 55 years of age to file a civil CSA claim.¹⁴⁹ Further, the CVA provides survivors of CSA previously barred by the statute of limitations a one-year window to file a civil CSA claim.¹⁵⁰ This window was extended an additional year during the COVID-19 pandemic.¹⁵¹

However, when that window opened, some New York courts were overwhelmed with an onslaught of litigation.¹⁵² In New York City alone, over 5,000 lawsuits previously barred by New York's civil statute of limitations were filed under the CVA.¹⁵³ Because of the number of filings, many of these cases currently remain untouched by the courts.¹⁵⁴ As at least one survivor of CSA, who filed during the revival window, noted, he feels he is "being abused all over again."¹⁵⁵

Although some scholars suggest that extending the statute of limitations, or even creating a revival window, is unlikely to create a massive wave of litigation that bombards the courts, New York City's situation seems to have done exactly that.¹⁵⁶ However, this alone should not deter states like Ohio from extending their statute of limitations or creating a revival window. While the effect of copious amounts of litigation is a daunting issue for the courts, the stalling of many of these lawsuits, undoubtedly, was partially affected by the numerous effects the COVID-19 pandemic had on the legal system. Thus, Ohio should still consider extending the statute of limitations. Since most survivors of CSA come forward at approximately 50 years of age, an extended statutory period, like New York's, would give survivors of CSA plenty of time to bring a civil claim.¹⁵⁷

2. Rhode Island

Prior to amending its statute of limitations, Rhode Island gave survivors of CSA only seven years to file a civil claim or else it was barred by the statute of limitations.¹⁵⁸ In 2019, however, Rhode Island amended its

¹⁴⁸ *Id.*; DEL. CODE ANN. tit. 10, § 8145 (2007).

¹⁴⁹ *What Is the Child Victims Act?*, *supra* note 147.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Kathianne Boniello & Susan Edelman, 'No Justice': Thousands of NYC Child Sex Abuse Cases Stalled in Court, N.Y. POST, <https://nypost.com/2022/08/06/thousands-of-nyc-child-sex-abuse-cases-stalled-in-courts/> (Aug. 6, 2022, 2:22 PM).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* (internal quotation omitted).

¹⁵⁶ David R. Katner, *Delayed Responses to Child Sexual Abuse, The Kavanaugh Confirmation Hearing, and Eliminating Statutes of Limitation for Child Sexual Abuse Cases*, 47 AM. J. CRIM. L. 1, 31 (2020); See Boniello & Edelman, *supra* note 152.

¹⁵⁷ King, *supra* note 1.

¹⁵⁸ 9 R.I. GEN. LAWS § 9-1-51 (1993).

laws to extend the statute of limitations.¹⁵⁹ Under the 2019 amendments, Rhode Island extended the statute of limitations to give survivors of CSA 35 years past the age of majority to bring a civil CSA claim.¹⁶⁰ This means that survivors of CSA in Rhode Island have until 53 years of age to bring a claim.¹⁶¹ Further, although Rhode Island's new law is prospective only, meaning that it only applies to future-looking CSA civil litigation, the amendment does provide that when a survivor of CSA does not discover, or recover memories of the sexual abuse until later, the survivor of CSA has an additional seven years to sue.¹⁶²

Like New York, Rhode Island's extended statute of limitations, and discovery rule, considers that survivors of CSA might experience dissociative amnesia that prevents them from coming forward with their claims until much later in life. While both New York and Rhode Island offer promising changes in the law, Ohio should look to adopt a model like Rhode Island's. If Ohio were to adopt an extended limitations period like Rhode Island's, Ohio would not only be taking cases of dissociative amnesia into account but would also ensure that survivors of CSA who did not feel comfortable coming forward with their allegations until later in life could be heard. Further, Ohio could avoid the impending wave of litigation that overbore New York's courts.

C. States That Employ a Shorter Limitations Period for Civil CSA Claims

Ohio is not the only state that provides strict time limitations and fails to provide a discovery rule in CSA claims. In fact, there are some states with limitations as bad, or worse, than Ohio's. These limitations periods are considered "bad" because they give such short periods of time to file claims before they are time-barred. In fact, both Indiana and Alabama rank as having some of the worst statutes of limitations for civil CSA claims.¹⁶³

1. Indiana

Indiana law is generally unforgiving and unaccommodating to survivors of CSA. The Indiana civil statute of limitations for CSA claims provides that a CSA claim must be brought either within "seven (7) years after the cause of action accrues" or "four (4) years after the person ceases to be dependent of the person alleged to have performed the sexual abuse."¹⁶⁴ In Indiana, a cause of action accrues when the "damage is or could be

¹⁵⁹ Katherine Gregg, *R.I. General Assembly Passes Bill To Extend Sex-Abuse Statute of Limitations*, THE PROVIDENCE J., <https://www.providencejournal.com/story/news/politics/2019/06/26/ri-general-assembly-passes-bill-to-extend-sex-abuse-statute-of-limitations/4762739007/> (June 26, 2019, 8:23 PM).

¹⁶⁰ *Id.*; 9 R.I. GEN. LAWS § 9-1-51 (2019).

¹⁶¹ Gregg, *supra* note 159.

¹⁶² *Id.*; 9 R.I. GEN. LAWS § 9-1-51 (2019).

¹⁶³ See *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, *supra* note 120.

¹⁶⁴ IND. CODE § 34-11-2-4 (2021).

ascertained, not the time the wrongful act transpired.”¹⁶⁵

Further, Indiana’s harsh limitations period does not apply a discovery rule in situations where victims of CSA might experience dissociative amnesia.¹⁶⁶ For example, in *Hildebrand v. Hildebrand*, Susan Hildebrand alleged that her father sexually abused her for approximately four years.¹⁶⁷ Susan confided in several people about the abuse she suffered and sought therapy to treat disabling depression.¹⁶⁸ However, Susan did not connect her depression symptoms with the trauma she experienced as a child until 1987, several years after the limitations period barred her claim.¹⁶⁹ Although Susan attempted to argue for the application of the discovery rule in her case, the Indiana court declined to apply it.¹⁷⁰ Indiana declined to apply the discovery rule because, in the eyes of the court, Susan’s injuries were neither severe enough nor analogous enough to cases where the discovery rule had been applied in the state.¹⁷¹

2. Alabama

Perhaps more unforgiving and unaccommodating than Indiana’s civil statute of limitations for CSA claims is Alabama’s civil statute of limitations. In Alabama, survivors of CSA must bring a civil CSA claim within two years after turning 19 years old, which means that, once the survivor of CSA turns 21, their opportunity to bring a claim has elapsed.¹⁷² Further, Alabama provides no discovery rule to toll the statute of limitations, which means that Alabama does not take cases of dissociative amnesia in CSA survivors into account.¹⁷³

Although Ohio’s civil statute of limitations for CSA claims is seemingly more forgiving than Indiana’s or Alabama’s, it is just as unaccommodating. Ohio, like the neighboring state of Indiana and the state of Alabama, declines to implement a discovery rule that takes instances of dissociative amnesia into account.¹⁷⁴ Thus, Ohio’s civil statute of limitations is no better than Indiana’s or Alabama’s because it fails to accommodate survivors of CSA who do not immediately remember those traumatic experiences. Further, Alabama’s and Indiana’s limitations periods, like Ohio’s, seemingly penalize survivors of CSA for not bringing their claims

¹⁶⁵ *Hildebrand v. Hildebrand*, 736 F. Supp. 1512, 1527 (S.D. Ind. 1990).

¹⁶⁶ *See generally id.*

¹⁶⁷ *Id.* at 1514–15.

¹⁶⁸ *See id.* at 1514–16.

¹⁶⁹ *See id.* at 1516.

¹⁷⁰ *Id.* at 1521.

¹⁷¹ *Id.* at 1521.

¹⁷² *See* ALA. CODE § 6-2-38 (2022); John Sharp, *Alabama One of the ‘Worst’ States for Adult Victims of Child Sex Abuse To Seek Civil Remedies*, AL.COM (Dec. 12, 2014, 7:55 PM), https://www.al.com/news/mobile/2014/12/alabama_one_of_the_worst_state.html.

¹⁷³ *See id.*

¹⁷⁴ *Pratte v. Stewart*, 125 Ohio St. 3d 473, 2010-Ohio-1860, 929 N.E.2d 415, at 3.

sooner. Instead of creating legislation that understands the emotional, mental, and even physical toll that sexual abuse places on its survivors, states like Indiana, Alabama, and Ohio penalize survivors of CSA for being affected by the trauma.

IV. PROPOSED CHANGES TO OHIO'S CIVIL STATUTE OF LIMITATIONS

A. *Recent Legislation that Proposes Amendments to Ohio's Civil Statute of Limitations*

1. House Bill 266 (HB 266)

Although Ohio's current civil statute of limitations for CSA claims is unaccommodating and unforgiving, legislators have proposed changes to Ohio's civil statute of limitations for CSA claims. For example, the Ohio General Assembly proposed HB 266.¹⁷⁵ This bill seeks to do the following: (1) eliminate the civil statute of limitations for rape of minors and adults; (2) extend the civil statute of limitations to 55 years old; and (3) create a three-year revival window for expired civil claims.¹⁷⁶

Several survivors of CSA actively support HB 266. For example, one survivor of CSA stated that Ohio's current civil statute of limitations has "robbed" him of the opportunity to seek compensation.¹⁷⁷ In fact, Ohio advocacy groups like Ohioans for Child Protection articulate that "many [survivors of CSA] never get justice" and add that "Ohio's [current] statute of limitations actually helps prevent their abusers from being held accountable."¹⁷⁸

Unfortunately, although survivors of CSA support HB 266, the bill has made little to no headway in being passed.¹⁷⁹ In fact, until December 2022, the bill was stalled in the House.¹⁸⁰ Additionally, when survivors of CSA held a press conference regarding the bill, no lawmakers attended.¹⁸¹ This lack of attendance, and even lack of support for HB 266, is attributed to the fact that, as Republican lawmaker Bill Seitz states, "there are 'better bills that address the same subject in a more balanced manner.'"¹⁸² However, in the beginning of December 2022, the Criminal Justice Committee held a

¹⁷⁵ *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, *supra* note 120.

¹⁷⁶ *Id.*; H.B. 266, 134th Gen. Assemb., Reg. Sess. (Ohio 2021).

¹⁷⁷ Trau, *supra* note 9.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *House Bill 266 Committee Activity*, THE OHIO LEGISLATURE, <https://www.legislature.ohio.gov/legislation/134/hb266/committee>, (last visited Sept. 30, 2023).

¹⁸¹ Trau, *supra* note 9.

¹⁸² *Id.*

hearing on HB 266.¹⁸³ Thus, it remains to be seen whether this bill will, in fact, be passed.

2. House Bill 709 (HB 709)

This seemingly better bill alluded to by Seitz is HB 709. However, this bill only abolishes the civil statute of limitations for particular kinds of CSA cases in very specific instances.¹⁸⁴ For example, HB 709, also referred to as the “Scout’s Honor Law,” eliminates “the civil statute of limitations for damages for victims of child sex abuse in the event of bankruptcy settlements”¹⁸⁵ HB 709 was motivated by the \$850 million settlement offer from Boy Scouts of America, which filed for Chapter 11 bankruptcy in early 2020 after facing 275 CSA lawsuits and 1,400 potential CSA claims.¹⁸⁶ By November 2020, the number of CSA claims amassed to approximately 90,000, and made this case “one of the largest sex abuse cases against a single national organization.”¹⁸⁷ While many saw Boy Scouts of America’s filing for Chapter 11 bankruptcy as a method of protecting their “Mount Everest [of] dirty secrets,” Boy Scouts of America utilized bankruptcy to create the Victims Compensation Trust, which provides “equitable compensation to victims [of CSA].”¹⁸⁸

HB 709 provides that Ohio survivors of CSA would receive the maximum possible amount from the Victims Compensation Trust.¹⁸⁹ Without the bill, Ohio survivors of CSA would only receive approximately 30–45% of the trust amount.¹⁹⁰ Unfortunately, HB 709 stalled in the House and was not passed.¹⁹¹ However, the Ohio General Assembly later passed Senate Bill 199 (SB 199) in December 2022, which ultimately enacted the Scout’s Honor Law.¹⁹² Thus, while Ohio has made some progress to eliminate the civil statute of limitations for CSA claims, this progress is still simply not enough.

¹⁸³ *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, *supra* note 120.

¹⁸⁴ Trau, *supra* note 9.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*; Jordan Mendoza, *Boy Scouts Offer to Compensate Sexual Abuse Victims in Historic \$850 Million Bankruptcy Settlement*, USA TODAY, <https://www.usatoday.com/story/news/investigations/2021/07/01/boy-scouts-offer-sexual-abuse-victims-historic-850-million-settlement/7835098002/> (July 5, 2021, 1:19 PM).

¹⁸⁷ Mendoza, *supra* note 185.

¹⁸⁸ Cara Kelly et al., *Boy Scouts Files Chapter 11 Bankruptcy in the Face of Thousands of Child Abuse Allegations*, USA TODAY, <https://www.usatoday.com/in-depth/news/investigations/2020/02/18/boy-scouts-bsa-chapter-11-bankruptcy-sexual-abuse-cases/1301187001/> (May 18, 2020, 4:51 PM) (internal quotation omitted).

¹⁸⁹ Trau, *supra* note 9.

¹⁹⁰ *Id.*

¹⁹¹ *House Bill 709 Status*, THE OHIO LEGISLATURE, <https://www.legislature.ohio.gov/legislation/134/hb709/status> (last visited Sept. 30, 2023).

¹⁹² *National Overview of Statutes of Limitation (SOLs) for Child Sex Abuse*, *supra* note 120; *see also* S.B. 199, 134th Gen. Assemb., Reg. Sess. (Ohio 2021).

B. Proposed Changes to Ohio's Civil Statute of Limitations

To effectively recognize the rights of survivors of CSA, Ohio should abolish the civil statute of limitations. Ohio should do this for several reasons. First, dissociative amnesia, or other factors, may prevent survivors of CSA from coming forward until years after the alleged abuse occurs. Second, eliminating the civil statute of limitations for CSA claims would not overburden the courts. Third, abolishing the civil statute of limitations would not violate the perpetrator's constitutional rights.

1. Survivors of CSA Do Not Come Forward Until Years After Abuse Occurred.

On average, survivors of CSA do not come forward with allegations of abuse until approximately 52 years old.¹⁹³ While this delay may often be attributed to dissociative amnesia, most survivors of CSA come forward several years after the alleged abuse occurred because of "shame, embarrassment, confusion, denial, or some other psychological phenomenon."¹⁹⁴ While survivors of CSA should be praised for coming forward with allegations of abuse, the existence of a civil statute of limitations revictimizes these individuals by barring their claims before they either recover memories of the abuse or acknowledge the CSA.

Ohio's current civil statute of limitations provides that a survivor of CSA must come forward with allegations before they turn 30 years old, which is more than 20 years earlier than when the average survivor of CSA comes forward.¹⁹⁵ Under the current civil statute of limitations, most survivors of CSA cannot come forward with allegations of abuse. Instead, Ohio's civil statute of limitations effectively silences these survivors of CSA. Therefore, abolishing the civil statute of limitations would provide survivors of CSA time to come forward and would ensure that they can seek compensation for the abuse.

2. Elimination of the Civil Statute of Limitations Will Not Overburden Courts

Although abolishing the civil statute of limitations for CSA claims seems plausible, there are some concerns that may arise. One concern is that, if Ohio were to eliminate the civil statute of limitations and allow the filing of decades-old CSA claims, courts would become flooded with litigation. This concern materialized in New York, where over 5,000 CSA claims previously barred by the civil statute of limitations were filed under the

¹⁹³ Trau, *supra* note 9.

¹⁹⁴ See David Viens, *Countdown to Injustice: The Irrational Application of Criminal Statute of Limitations to Sexual Offenses Against Children*, 38 SUFFOLK U. L. REV. 169, 180 (2004).

¹⁹⁵ OHIO REV. CODE ANN. § 2305.111(C); Trau, *supra* note 9.

CVA.¹⁹⁶ However, this onslaught of litigation can be attributed to New York's decision to merely extend the statute of limitations; whereas, had it abolished it, litigants would not have been in a rush to file their claims.¹⁹⁷ Further, the delay in deciding these cases could also be attributed to the COVID-19 pandemic, which occurred while these CSA cases were being filed.¹⁹⁸

While extending the statute of limitations, like New York, can overwhelm courts with litigation, abolishing the civil statute of limitations, as some scholars indicate, will not "result in a massive wave of litigation throughout the country that could overwhelm state legal systems."¹⁹⁹ For example, both Maine and Delaware demonstrate that courts do not become overwhelmed with litigation when the civil statute of limitations for CSA claims is abolished.²⁰⁰ In Delaware, only 900 claims previously barred by the civil statute of limitations were filed.²⁰¹ Additionally, in Maine, only 13 cases previously barred were litigated.²⁰² This number is minimal compared to the almost 42 million cases of CSA that occur in the United States alone.²⁰³ Since Ohio would likely not encounter the same difficulties as New York, eliminating the civil statute of limitations for CSA claims would not be likely to overburden courts.

3. Perpetrator's Constitutional Rights Will Not Be Violated

An additional concern is that abolishing the civil statute of limitations for CSA claims will violate a perpetrator's constitutional rights. Generally, a statute of limitations protects a perpetrator's constitutional rights because it "promote[s] fair and prompt litigation and protect[s] [perpetrators] from stale or fraudulent claims brought after memories have faded or evidence has been lost."²⁰⁴ For example, statutes of limitations ensure that perpetrators have access to all available evidence and can prepare a defense with that evidence.²⁰⁵ Without these limitations, perpetrators will no longer be able to limit the claims against them.²⁰⁶ Further, there is also the possibility that, as is currently happening in Maine, perpetrators may not be able to exercise their

¹⁹⁶ Bonielle & Eldelman, *supra* note 152.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Katner, *supra* note 156, at 31.

²⁰⁰ *See supra* III. A.

²⁰¹ Neuberger, *supra* note 124.

²⁰² David Sharp, *supra* note 137.

²⁰³ *Child Sexual Abuse Facts & Resources*, *supra* note 12.

²⁰⁴ *Aicher v. Wisconsin Patients Compensation Fund*, 613 N.W.2d 849, 860 (Wis. 2000) (internal quotation omitted).

²⁰⁵ Samantha S. Rose, *Vindication for Victims: A Proposal To Eliminate the Civil Statute of Limitations for Minor Sexual Abuse Claims in Iowa*, 108 IOWA L. REV. 957, 975 (2023).

²⁰⁶ *Aicher*, 613 N.W.2d at 859–60.

constitutional right to face their accusers.²⁰⁷

Civil statutes of limitations may also serve a more significant purpose for the court and public as well. For example, statutes of limitations can prevent an onslaught of litigation, and protect both the court's and the public's important interests in the quality and quantity of evidence.²⁰⁸ If survivors of CSA can file claims that are decades old, both the quantity and quality of evidence is significantly reduced.²⁰⁹

However, eliminating a civil statute of limitations does not violate the perpetrator's constitutional rights, nor undermine the interests of the courts and the public. Instead, eliminating the civil statute of limitations for CSA claims can provide the perfect balance between the survivor's and perpetrator's rights. For example, eliminating the civil statute of limitations provides survivors of CSA with time to come forward with their claims, regardless of whether the survivor of CSA experiences dissociative amnesia or some other obstacle.²¹⁰ Additionally, eliminating the civil statute of limitations for CSA claims ensures that perpetrators are held accountable for their actions and are not unfairly protected by the civil statute of limitations.²¹¹ In fact, eliminating the civil statute of limitations "represent[s] a significant policy decision by state legislators to side with victims over [perpetrators]."²¹²

V. CONCLUSION

Ohio should follow in the footsteps of Delaware and Maine and abolish the civil statute of limitations for CSA claims. Eliminating the statute of limitations ensures that survivors of CSA have time to come forward, regardless of whether they experience dissociative amnesia or not. Further, eliminating the civil statute of limitations for CSA claims will not overburden Ohio courts or violate the perpetrator's constitutional rights. Although legislation that seeks to abolish the civil statute of limitations for CSA claims currently collects dust among a pile of other stalled bills, advocacy and exposure to the issue may compel legislators to reform the civil statute of limitations. By eventually eliminating the civil statute of limitations for CSA claims, legislators can help "survivors come forward to seek the critical closure they need."²¹³ And, as Dawn Addis, an Assembly member in

²⁰⁷ See generally Emily Allen, *Court Hears Arguments in Diocese's Constitutional Challenge*, PORTLAND PRESS HERALD, <https://www.pressherald.com/2023/01/31/maine-judge-weighing-constitutionality-of-new-law-for-previously-expired-sexual-abuse-claims/> (last visited Sept. 15, 2023); Gabriela Hildago, *Recurring Cardinal Sins: How the Holy See and Canon Law Have Perpetuated Child Sexual Abuse by Clergy Members*, 39 CHILD. LEGAL RTS. J. 145, 160 (2019).

²⁰⁸ Rose, *supra* note 204, at 974–75.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 972.

²¹¹ See generally *id.*

²¹² *Id.* at 976 (internal quotation omitted).

²¹³ Candice Ngyuen et al., *California Lawmakers Seek To End Civil Statute of Limitations for Childhood Sexual Abuse Claims*, NBC BAY AREA (Feb. 6, 2023, 7:42 PM),

California states, there is no time like the present “to end this arbitrary and cruel time limit on justice.”²¹⁴

<https://www.nbcbayarea.com/news/california/california-lawmakers-civil-statute-of-limitations-childhood-sexual-abuse-claims/3149955/> (internal quotation omitted).

²¹⁴ *Id.*