



## The Child Victims Act (DRAFT)

### Problem

New York's laws are among *the worst in the country* at protecting the rights of victims of child abuse. The state's law only allows criminal or civil action against the perpetrator until the victim turns 23, and only allows civil suits against the institution involved until the victim turns 21. These arbitrary time limits only serve to protect the perpetrator and the institution, if any, the perpetrator represents. It is clearly not enough time for most child victims to acknowledge their victimization and be willing – and emotionally and financially able -- to act against their perpetrator.

### Solution

California, Minnesota and Delaware have enacted strong and effective laws to protect child victims by eliminating or curtailing the statute of limitations on these crimes. Some states have also provided a “window of opportunity” for victims to bring civil action in cases regardless of their current age. New York has been trying to pass a such a bill since 2006, but it has never gotten through the State Senate.

**New York must pass a Child Victims Act.** The Governor and the state representatives must make 2018 the year to bring justice to our past and future children.

### Fast Facts

- [Research indicates](#) that 1 in 5 girls and 1 in 20 boys is a victim of child sexual abuse (Pereda et al, 2009).
- [Between 60% and 80% of adults who were sexually abused](#) as children don't disclose it until they are adults (Alaggia, 2010).
- [Only a small minority, 10%–18%, recall authorities being told](#) of their abuse when they were children (K. London et. al. 2005).
- A [study funded by the National Institute of Mental Health](#) from 1985 concluded that the typical sex offender "molests an average of 117 youngsters, most of whom do not report the offense."
- [Survivors of childhood sexual abuse](#) are 10 to 13 times more likely to attempt suicide. (Plunkett A, O'Toole B, Swanston H, Oates RK, Shrimpton S, Parkinson P 2001).

- [Seventy-three percent of child victims do not tell anyone](#) about the abuse for at least 1 year. Forty-five percent do not tell anyone for 5 years. Some never disclose (Broman-Fulks et al, 2007).

## History

It is a painful irony that the state which began organized child protection in the United States can't pass a Child Victims Act 140 years later.

From colonial times to most of the nineteenth century, there was no organized protection of children. Violence against children was prosecuted in the same manner as adults, "[to punish egregious abuse.](#)"

In addition, judges had the discretion to remove children from their families to stop abuse. But there were no systemic standards to protect children, and the willingness of judges to act in these was erratic at best.

In 1875, however, New York led the nation when "[the world's first organization](#) devoted entirely to child protection came into existence -- the New York Society for the Prevention of Cruelty to Children." The success of the Society led to the creation of [300 nongovernmental societies](#) across the country.

However, the results were piecemeal, and the particular issue of the sexual exploitation was not addressed. This was not, however, due to ignorance on the topic:

[That the young were sexually abused](#) was well known to nineteenth-century Americans. In New York City, between 1790 and 1876, between a third and a half of rape victims were under the age of 19; during the 1820s, the figure was 76 percent. The historian Lynn Sacco found more than 500 published newspaper reports of father-daughter incest between 1817 and 1899. An 1894 textbook, *A System of Legal Medicine*, reported that the "rape of children is the most frequent form of sexual crime."

When the Great Depression occurred, funding for private organization collapsed, as did their ability to help children. As the New Deal enabled the federal government to provide more and more social services, there was a movement to change the protection of children from private agencies to the government.

This culminated in the Social Security Act of 1935. The Act included Aid to Dependent Children, which helped fund poor families. In addition, the law authorized the Federal Government to work with state welfare agencies in building child welfare services "[for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent.](#)"

By 1967, of the 300 nongovernmental agencies originally created to help children, only 10 had survived. Although the government had the authority to protect children, "[No state and no community](#) has developed a Child Protective Service program adequate in size to meet the service needs of all reported cases of child neglect, abuse and exploitation."

However, in 1962, the Social Security Act was amended and required states to pledge that by 1975, they would make child welfare services available statewide. In addition, reporting laws on child abuse came into effect. For the first time, the country became aware [of how big the problem might be:](#)

By 1974, some 60,000 cases were reported. In 1980, the number exceeded one million. By 1990, reports topped two million, and in 2000, reports hovered around three million.

In 1974, the Federal Government finally "[assumed a leadership role](#)" by passing the Child Abuse Prevention and Treatment Act of 1974 (CAPTA). The law authorized federal funds to improve the states' response to physical and sexual abuse and neglect. It also created a national agency to focus on the issue, the National Center on Child Abuse and Neglect. Finally, there was a national agency to address the problem.

Yet the country was still unprepared to fully address the issue of child sexual abuse. A leading researcher wrote in 1975, "[Virtually no literature exists](#) on the sexual abuse of children." Another writer said the problem of sexual molestation "[remains a taboo topic](#) in many areas."

However, the lack of research wasn't exactly true. There had been [a very famous research project in 1953](#):

In his landmark study of female sexual behavior, published in 1953, Alfred Kinsey reported that fully a quarter of all girls under the age of 14 reported that they had experienced some form of sexual abuse, including exhibitionism, fondling, or incest (at rates roughly similar to those reported today). Yet when these findings were reported, they evoked virtually no public interest, although Kinsey's statistics about pre-marital sexual activity and adultery provoked a huge public outcry.

No doubt, in the 1950s, if the average sexual behavior of women was considered shocking, society was simply not ready to consider the implications of Kinsey's data on molestation.

By the late nineteen-seventies, however, society had changed sufficiently for new research on molestation to appear in the literature. A breakthrough occurred in 1979, when David Finkelhor published *Sexually Victimized Children*:

[Finkelhor surveyed 796 college students](#) and found that "19.2 percent of the women and 8.6 percent of the men had been sexually victimized as children." "Most of the sexual abuse was committed by someone the child knew, and most was not reported.

Other research soon appeared that had similar findings.

Since the turn of this century, we have become awash in information on the gravity of child molestation. The scope of the problem is huge. For instance, [research indicates](#) that 1 in 5 girls and 1 in 20 boys is a victim of child sexual abuse (Pereda et al, 2009). Perhaps even more disturbing, [only a small minority, 10%–18%, recall authorities being told](#) of their abuse when they were children (K. London et. al. 2005). In fact, [only about 38% of child victims disclose](#) the fact that they have been sexually abused. Some never disclose (London, 2003)

The fact that so many children are abused and forced by their abusers to keep quiet creates a unique problem for the law. Underlying the concept of a statute of limitations is the assumption that victims want to tell the police about a crime that occurred against them.

We see with child sexual abuse that is often not the case. For many child abuse victims, it takes years – even decades – to develop the emotional strength to accuse their victimizer. In fact, according to a

study by the National Institutes of Health, [between 60–80% of child sexual abuse victims](#) withhold disclosure until adulthood.

In New York State, the law allows victims of sexual abuse to bring either criminal charges or civil lawsuits until the age of 23 – one of the shortest windows in the country. Repeatedly since 2006, a Child Victims Act has been passed by the Assembly, only to go down without a vote by the State Senate.

Most recently, the Act seems to have been the victim – at least in part -- of a lack of gubernatorial leadership. In early 2017, according to [The Daily News](#), the Governor claimed the “Child Victims Act would be a priority for him this year.” However, *the News* added, “While the issue is in his policybook for 2017, the governor never publicly mentioned it during his six regional State of the State addresses he gave this week.”

Some months later, referring to the attempt to pass the Child Victim Act, [the New York Times noted](#):

As the legislative session has unfolded in Albany, though, the governor’s actions have not matched his rhetoric. In response to lobbying from Safe Horizon, a victims’ advocacy group, over the past week, his administration questioned whether there was adequate support for passing the bill before the end of the session next month.

The attempt to pass the bill in 2017 finally died at the end of the legislative session when the Senate Majority Leader John Flanagan said “[It’s under discussion, but the Senate](#) is not going to be taking that bill up.”

## Other States

A number of states have passed laws similar to New York’s proposed Child Victims Act:

### California

Spurred on by the Bill Cosby case, and the inability of any criminal charges against him because of the statute of limitations on rape, in September of 2016, Governor Brown signed SB 813, the “Justice for Victims Act.” The law passed unopposed in both the Senate and the Assembly.

Previous law limited prosecution of a felony sexual offense to ten years after the offense had been committed. The new law allows for the indefinite criminal prosecution of these cases, thus doing away with the statute of limitations.

For civil cases, although California has a putative statute of limitations for these cases – the victim must be no older than 26, state law also includes a feature that obviates the statute of limitations:

[The discovery rule](#) allows for civil lawsuits to go forward when they are “within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse.”

## Minnesota

Passed in 2013, The Minnesota Child Victims Act eliminates the statutes of limitations for the sexual abuse of minors. The law provided a window up to May 25, 2016 deadline for filing older claims – and [more than 850 were made in that time.](#)

For criminal offenses, if DNA is involved in the sexual abuse case, there is no statute of limitations. Otherwise, 1st through 4th degree criminal sexual conduct with a minor, the statute of limitations is nine years from the act or within three years of being reported to law enforcement.

## Delaware

[Delaware passed Senate Bill 29](#) in 2007 which eliminated the statute of limitations on child sexual abuse for civil suits, and provided a two-year window for people who had previously been bared from filing suit to do so.

For criminal cases, [Delaware has no statute of limitations other than for](#) sexual harassment and indecent exposure.

## Resources

[“12 Confronting Child Sexual Abuse Statistics All Parents Need to Know,”](#) by Jayneen Sanders, Huffpost, January 25, 2017.

[“Child Abuse Statute of Limitations for each State in the United States,”](#) by Angelroar, January 16, 2011

[“Child Sexual Abuse Statistics,”](#) Darkness to Light, January, 2017.

[“Cuomo unveils plan for Child Victims Act that would do away with statute of limitation,”](#) by Kenneth Lovett, *New York Daily News*, January 12, 2017.

[“An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health,”](#) By Ramona Alaggia, PhD, *J Can Acad Child Adolesc Psychiatry*. 2010 Feb; 19(1): 32–39.

[“Eliminate the Statute of Limitations for Child Sexual Abuse Offenses,”](#) Prevent Child Abuse New York, accessed December 27, 2017.

[“Keeping Children Safe: Rhetoric and Reality,”](#) by Ernest E. Allen, *Juvenile Justice Journal*, Volume V, Number 1, May 1998.

[“More than 800 sex abuse claims filed under Minnesota law,”](#) by Jean Hopfensperger, *Star Tribune*, May 23, 2016.

[“Outdated Laws, Unpunished Child Abusers,”](#) by Ginia Bellafante, *The New York Times*, May 11, 2017.

[“Placing childhood sexual abuse in historical perspective,”](#) by Steven Mintz, *The Immanent Frame*, July 13, 2012.

[“State Senate Republicans kill the Child Victims Act again,”](#) by Glenn Blain and Kenneth Lovett, *New York Dailey News*, June 20, 2017.

[“A Short History of Child Protection in America,”](#) by John E.B. Myers, *Family Law Quarterly*, Volume 42, Number 3, Fall 2008.

[“What Are the California Statutes of Limitations on Sexual Abuse Crimes?”](#) Legal Match, accessed December 28, 2017.