



**Pennsylvania Council of Children, Youth & Family Services (PCCYFS) Written Testimony on
House Bill 1 and Senate Bill 1**
House Judiciary Committee Hearing
March 29, 2023

Dear Chairman Briggs, Republican Chair Kauffman, and members of the House Judiciary Committee:

The Pennsylvania Council of Children, Youth and Family Services (PCCYFS) is a statewide membership association representing nearly 100 private human service agencies serving children and youth. Our provider agencies employ more than 10,000 individuals and have served hundreds of thousands of children, youth, and families across Pennsylvania. These services include foster care/kinship care, adoption, residential treatment, behavioral health services, education, counseling, independent living/transitional living services, juvenile justice services, and others.

PCCYFS is in support of the provisions in House Bill 1 and Senate Bill 1 that suspend the statute of limitations on claims of child sexual abuse for two years, pending the approval of a constitutional amendment. We affirm that victims of childhood sexual abuse should receive an opportunity for financial restitution, especially given the ways in which one's brain may delay or suppress these horrifically traumatic events as well as a survivor's own right to disclose along their own timeline.

As we researched this issue in other states we found that many victims in other states struggled to find attorneys willing to represent them as the vast majority of them would only pursue claims against institutions, which are often seen as "deeper pockets,"¹ leaving many victims without access to legal counsel.² Further, these claims are frequently subject to frivolous or fraudulent claims³ that can be undermining and detrimental to survivors of abuse.

¹Lee, Brian "A Theoretical Impossibility: As Attorneys Are Flooded with Plaintiffs Under Child Victims Act, a Legislative Push May Help." *New York Law Journal*, April 12, 2022.

<https://www.law.com/newyorklawjournal/2022/04/12/a-theoretical-impossibility-as-attorneys-are-flooded-with-plaintiffs-under-child-victims-act-a-legislative-push-may-help/>

²McKinley, Edward "Many victims fall through the cracks of New York's Child Victims Act." *Times Union* [Albany, NY], September 23, 2020. <https://www.timesunion.com/news/article/CVA-lawyers-15592197.php>

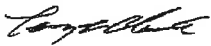
³Hemenway, Chad "Insurers Say 'Bazooka' of Bogus Boys Scouts Claims Is Abuse of Bankruptcy System." *Insurance Journal*, November 21, 2022.

<https://www.insurancejournal.com/magazines/mag-features/2022/11/21/695622.htm>

Given the need to sustain a safety net of services for the benefit of present victims of abuse and neglect, we ask that the legislature consider companion or implementation-focused legislation that outlines safeguards against the exploitation of these laws, which many other states have done.⁴ Safeguards can include greater specificity around who can be a plaintiff or a defendant in these cases, a standard for when an employer or institution can also be included in a claim, a review of attorney's and other fees when awarding damages, and other considerations for the benefit of victims. Without such safeguards, this legislation can result in the unintended consequences of closing agencies that are working diligently to support present victims of abuse and neglect.

If you have any questions or if we can provide you with additional information, please do not hesitate to contact me at TerryC@pccyfs.org or 717-651-1725.

Sincerely,



Terry L. Clark, MPA
President and CEO, PCCYFS

⁴PA Council of Children, Youth & Family Services "A Balanced Approach to Pennsylvania's Statute of Limitations for Sexual Abuse Cases" February 17, 2023. <https://pccyfs.org/wp-content/uploads/2023/03/PCCYFS-SOL-One-Page-2.17.2023.pdf>

References

Page Printed From:

<https://www.law.com/newyorklawjournal/2022/04/12/a-theoretical-impossibility-as-attorneys-are-flooded-with-plaintiffs-under-child-victims-act-a-legislative-push-may-help/>



NOT FOR REPRINT



'A Theoretical Impossibility': As Attorneys Are Flooded With Plaintiffs Under Child Victims Act, a Legislative Push May Help



More than 10,000 cases were filed throughout New York, but thousands of others are not being served because they can't find a lawyer willing to take on their cases, advocates say. A legislative effort has begun to establish a fund to help these victims have their day in court.



April 12, 2022 at 11:31 AM

Personal Injury

by [Brian Lee](#)**Brian Lee**

Litigation Reporter



A partner in a New York City law firm suggests "it's become a theoretical impossibility" to serve all the thousands of purported victims who are in need of legal representation for age-old allegations of sex abuse, after a 2019 reform measure extended the statute of limitation on cases.

Attorney James Marsh, a partner with Marsh Law, said he figured to get about 100 clients who would file claims under the Child Victims Act of 2019, which allows the statute of limitations to begin running when a child turns 23 in a criminal case, and for civil suits to be filed before a toddler, preteen or teenage victim turns 55. The lookback window on cases ended on Aug. 14, 2021, after being open for two years.

After talking to 4,000 people for intakes since 2018, Marsh Law has taken on 800 to 1,000 cases, said Marsh, who initially dedicated three employees to CVA cases two years ago, but now uses 12 employees.

More than 10,000 cases were filed throughout New York, but thousands of others are not being served because they can't find a lawyer willing to take on their cases, advocates say.

Marsh supports a legislative effort to establish a fund to help these victims have their day in court.

Marsh and Gary A. Greenberg, the CEO of ProtectNYKids, stand behind S6847, a 2019 bill proposed by Sen. James Gaughran, D-Long Island, whose purpose is to establish a fund to assist victims of childhood sexual assault with civil legal services and fees. The proposal is sitting in the Senate Budget and Revenue Committee.

A previous similar proposal by former Sen. [Catharine Young](#), R-Olean, died in the Rules Committee.

In a recent letter to Chief Judge Janet DiFiore, Greenberg said thousands of victims cannot find lawyers to take their cases because no rich institution is involved in the defense of a case.

In an interview, Marsh points to Georgia, which created a center at the University of Georgia Law School, to handle victims' cases pro bono.

"I don't know how successful that program was, or the ins and outs of that program," Marsh said Monday. "But I do know that that's a big piece of what's missing from the New York reform, and this has been kicking around out there since well before 2018."

Marsh said he's always supported the idea of a fund as "a necessary adjunct" to any sort of reform.

"But after decades and decades of trying," Marsh said of the CVA, "legislation is obviously a process, and this was a huge process that many, many people worked on for a huge number of years. And so, on the one hand, we are lucky to get any reform at all."

"It wasn't the kind of situation where the Legislature was sitting around basically saying, 'Hey, tell us what we can do for you, and give us your wish list.' And certainly this was on the wish list. But because of the transitions in the Legislature, we were lucky to get any reform at all," he reiterated.

"Obviously, the devil's in the details and how it's actually going to work," he said. "But I know there's a lot of frustration out there with a lot of people that have valid claims that have been unable to pursue them. We're talking 10,000 cases in the state of New York. The bar is stretched thin, and we'd like to obviously help everyone out there. It's not for lack of trying."

In his letter to DiFiore, Greenberg pointed to a backlog of CVA cases.

"I understand the courts have had difficulty because of COVID," said Greenberg, whose outreach to the chief judge was accompanied by letter from a victim who said he was turned down by 40 lawyers.

"However, defense attorneys are filing frivolous motions and intentionally delaying answering motions or requests for deposition. I request the court enforce the [case management orders] issued and instructions to make CVA cases a priority," he said.

Greenberg pointed out that victims, witnesses and defendants are dying during the process, making cases more difficult for plaintiffs.

In an interview, Greenberg pointed to last year's death of Kevin Alvaro, 52, of Guilderland, who had a CVA case against the Albany Diocese.

Two women who have said they were molested more than 40 years ago—both awaiting days in court—explained their challenges finding representation.

Soyini Crenshaw of Brooklyn has claimed her uncle and cousin molested her when she was about 5, while Tracy Fichter said she was 11 when a grade school teacher in Rochester allegedly subjected her to a year of unwanted sexual contact.

In interviews, both women said they never had an inkling they would be afforded a legal recourse until the CVA took effect.

Neither have filed lawsuits yet.

Crenshaw said the potential defendants in her case aren't wealthy, and so she's been told during consultations with lawyers that her case would be problematic.

Fichter, who now resides in Naples, Florida, said several attorneys told her they'd be interested if she were accusing a larger institution affiliated with the Catholic Church or Boy Scouts, for instance.

Both women say money isn't their primary objective. They want to face their alleged abusers in court, and to a lesser extent, get help with the lifetime of counseling they've needed as a result of the alleged abuse.

"It's sad that money dictates how someone can get their day in court," Fichter said. "I hate saying that, but I can't think of another term."

Fichter said she's been to counseling off and on for more than 30 years.

"I've spent so much on therapy and broken relationships," she said. "I have a disorder that was caused from this abuse, and I just don't have the money to hire an attorney on my own."

Fichter called on lawmakers to consider the victims fund for people like her.

"We're not looking for a huge payout. We're looking for closure," Fichter said.

According to a post Friday on the JD Supra website, an effort is afoot to address the backlog of CVA cases in New York City.

The outlet reported Deputy Chief Administrative Judge Deborah Kaplan recently held a conference with members of the CVA Liaison Steering Committee to discuss the management of cases, the many complaints about the backlog, as well as concerns about having just one judge manage the heavy docket.

NOT FOR REPRINT

Copyright © 2023 ALM Global, LLC. All Rights Reserved.

Most popular

- 1.** Police: Albany Med lockdown suspect in custody
- 2.** Woman rescuing dog killed by car on I-787, troopers say
- 3.** Saving an iconic Bethlehem dairy barn
- 4.** Schenectady lawyer suspended over alleged misuse of firm's money
- 5.** Status of Sperry's uncertain during temporary closure

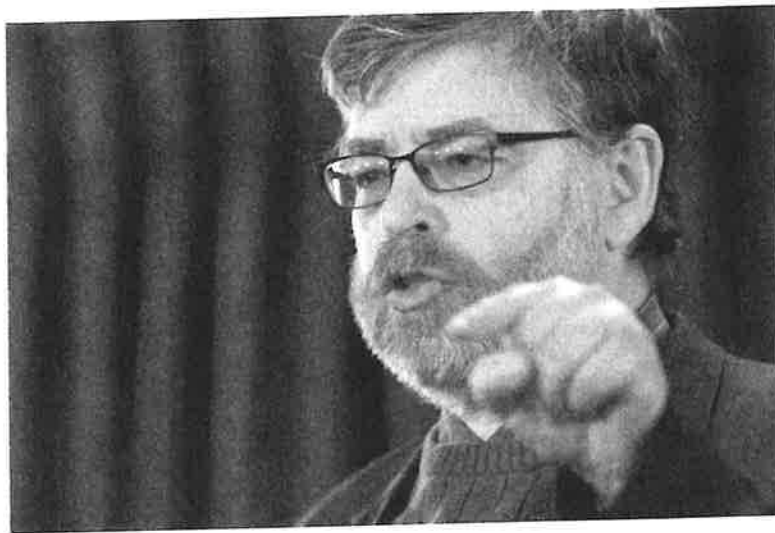
NEWS

Many victims fall through the cracks of New York's Child Victims Act



Edward McKinley

Sep. 23, 2020



1 of 9



Gary Greenberg, a New York businessman and founder of Fighting for Children PAC, speaks during a press conference to bring attention to the Child Victims Act on Monday, Jan. 14, 2019, at the Legislative Office Building in Albany, N.Y. Greenberg has waged a years-long effort advocating New York lawmakers to pass the Child Victims Act. He said he was raped as a 7-year-old boy by a hospital worker. The Child Victims Act expected to pass this month after being blocked by Senate GOP for years. (Will Waldron/Times Union)

Will Waldron/Times Union

ALBANY — More than 4,400 lawsuits have been filed against alleged child abusers under New York's Child Victims Act, but there are still many victims remain unable to access the court system in order to seek justice.

A decade-long political fight preceded the passage of the CVA last year. It expanded the statute of limitations for child sexual abuse and rape cases and opened a look-back window for bringing lawsuits against alleged abusers who had previously been immune from civil liability because of the time that passed.

The look-back window was extended this summer for another year due to COVID-19, but activists, politicians and alleged survivors of childhood sexual abuse say the law didn't go far enough and that many who suffered abuse as children are still unable to seek justice.

"Every single attorney on Google that we called in New York — downstate and upstate — told us that they are not interested in taking on a case like this because they will only take on cases from big organizations," said one woman, 34, in a phone interview with the Times Union. "It feels like abandonment all over again. Over and over again."

In that woman's case, her alleged abuser was her mother. There's no deep-pocketed institution behind her with insurance

[Subscribe](#) [Sign In](#)

"In general, cases that don't have a pot of gold at the end, it's hard to find attorneys for unless you have the money to pay them," said Assemblywoman Linda Rosenthal, a Democrat.

Despite the fact that upwards of 90 percent of child sex abuse is perpetrated by people who know the child, such as a family friend, neighbor or parent, a vast majority of the cases brought under the CVA are against institutions including schools, hospitals, the Catholic church, Boy Scouts or others.

A Times Union analysis a year ago found that more than 95 percent of cases named institutions as defendants. Since then nearly 4,000 more lawsuits have been filed, so a new, full analysis was not feasible, although it is obvious that there has not been a flood of cases against individuals to even out the numbers.

"I've heard from many victims that they cannot find a lawyer," said Gary Greenberg, one of the activists who helped lead the fight to pass the CVA and is mounting a write-in campaign for the New York 46th Senate seat. "They've attempted, you know, in multiple numbers to contact attorneys, and attorneys tell them that since their case does not involve an institution, they cannot represent them because it's just not cost-effective for attorneys to take these cases."

Greenberg said he has been in touch with many people who are having trouble finding lawyers who will take their cases. Because the lawyers would be unable to bank on winning big settlements at the end and taking their pay out of that, they either refuse the cases outright or ask for expensive payments throughout the legal process that many people cannot afford. Several members of the Legislature said these difficulties are a broader issue.

"A common practice in litigation is to go for the deep pockets," said state Sen. Alessandra Biaggi, a Westchester County Democrat. "I really feel that it's troublesome to leave these types of survivors without recourse."

One proposed policy measure to address that problem has been introduced by Sen. James Gaughran, a Suffolk County Democrat. Biaggi is a co-sponsor on the bill.

The bill would add a box at the bottom of state tax refund documents that New Yorkers could check to donate to a fund that provides grants to legal nonprofits that represent people who want to bring sex abuse claims. The bill would also establish fines for people found criminally responsible of certain sex crimes, and those fines would also go into the fund.

"What's falling through the cracks is that there are a lot of people who clearly, I believe, have legitimate cases they want to bring and can't find a lawyer to do it," Gaughran said. "This would then give these folks a vehicle to do this."

But for some who experienced abuse, overcoming this financial hurdle to the legal system may still not be enough to obtain justice.

A second woman, 23, who lives in Albany, said in a phone interview with the Times Union that she was molested once by her father when she was about 5 or 6 years old. It's common for memories of childhood to be fuzzy for anyone, and traumatic

experiences. She has been turned down by more than 10 law firms, she said.

She said she has been grilled by lawyers when she's discussed her case on the details of her abuse, asking how her father could only have abused her a single time.

Usually the attorneys say they're too busy to take the case or just stop returning her calls, she said; some have told her that lawyers aren't going to take her case because claims against individuals are too much work for too little compensation.

"I think there's a lot of hurdles to probably any case in this realm, but particularly when it comes to child sexual abuse, we are seeing law firms being reluctant to take cases not only for the reasons of finances, but also because of evidence," Biaggi said.

For child sexual abuse cases brought forth decades later, memories of the events are often fuzzy — blurred by the passage of time and the effect of trauma on the human brain. And when the alleged abusers are individuals operating outside of a system, there isn't a paper trail of personnel records to look at the way there would be at a school, for instance. For many, the best case scenario is he-said-she-said, which is often not enough to hold up in court.

"It's like (district attorneys) don't prosecute every case because they think they won't win, you know?" Rosenthal said. "I guess that's inherent in the system that not everyone has access to justice if there's a cost involved. That's the sad truth."

Sign up for the Daily Headlines newsletter

Stay informed with a daily digest of top headlines.

Email

SIGN UP

By signing up, you agree to our Terms of Use and acknowledge that your information will be used as described in our Privacy Policy.



Written By
Edward McKinley

Reach Edward on

Edward McKinley reports on Texas state government and politics from the Hearst Bureau in Austin for the Houston Chronicle and the San Antonio Express-News.

He is a 2019 graduate of the Missouri School of Journalism and a 2020 graduate of Georgetown's Master's in American Government program. He previously reported for The Albany Times Union and the Kansas City Star newspapers, and he originally hails from the great state of Minnesota.



TOP

ABOUT

- Our Company
- General Standards and Practices
- Newspaper Delivery Safety Procedures
- Advertising
- Interest Based Ads
- Terms of Use
- Privacy Notice
- Your California Privacy Rights
- Jobs at the Times Union

CONTACT

- Contact Us
- Weather
- School Closings
- Events Calendar

Celebrations

Online Store

Obituaries

Puzzles Palace

SERVICES

Subscriber Services

Corporate Subscriptions

Home Delivery

Mobile App

Become a Carrier

Copyright and Reprint

e-Edition

Archives

HEARST Media *Network*

©2023 The Hearst Corporation



View this article online: <https://www.insurancejournal.com/magazines/mag-features/2022/11/21/695622.htm>

Insurers Say 'Bazooka' of Bogus Boys Scouts Claims Is Abuse of Bankruptcy System

New You can now listen to Insurance Journal articles!

A group of insurers — including subsidiaries of AIG, Liberty Mutual, Allianz, Sampo International, and Travelers — are challenging an approval of the Boy Scouts of America's \$2.46 billion bankruptcy reorganization plan to allow the organization to settle tens of thousands of sex abuse claims.

In the 125-page document filed in U.S. District Court for the District of Delaware, the insurers jointly ask the court to reverse the bankruptcy plan because the claims-count has increased, they said, from "6,000% to over 82,000" since the bankruptcy filing — and a "significant portion are likely fraudulent."

"This court should not tolerate the bad faith, collusion, and outright fraud by claimants' counsel that resulted in this plan — conduct to which BSA was, at best, willfully blind," the insurers — more than a dozen in all — said in the filing. "Pointing an 82,000-claim bazooka at insurers" is an abuse of the bankruptcy system, they added.

Other BSA insurers, subsidiaries of Chubb and The Hartford, have previously agreed to contributions toward the plan.

However, insurers in the Nov. 7 filing said plaintiffs' attorneys "saw the bankruptcy as an opportunity for a windfall, launched a massive advertising campaign replete with false statements and began enlisting claimants on a contingency-fee basis."

"The attorneys themselves signed and filed thousands of proofs of claim in the bankruptcy, under penalty of perjury, that had missing or inaccurate information, often without ever reviewing the forms or contacting the claimants," the insurers allege in the filing.

Furthermore, the plan does not give the insurers due process to control or participate in the defense of the claims, leading to an outcome "designed to lead to claim values that are higher than those that would have been produced in the tort system."

More from Insurance Journal

[Today's Insurance Headlines](#) | [Most Popular](#) | [Features](#)

A BALANCED APPROACH TO PENNSYLVANIA'S STATUTE OF LIMITATIONS FOR SEXUAL ABUSE CASES

BACKGROUND

The Pennsylvania General Assembly is considering legislation to open a two-year window for victims of sexual abuse who were otherwise time-barred from bringing a claim against their abuser.

We support the legislation's core concept that victims of sexual abuse should receive restitution for their harm. The legislation, however, would benefit from greater balance to protect against exploitative claims that undermine the integrity of the law's purpose.

As seen in other states, legislation to pause a statute of limitations for sexual crimes, is particularly vulnerable to frivolous or fraudulent claims.

UNINTENDED CONSEQUENCES

Institutions that presently offer services to child victims of abuse are susceptible to closing their doors as a result of this legislation, but **not necessarily because they were complicit or failed to act in accordance with requirements.**

Attorneys filing claims under these statute of limitations cases are more likely to pursue claims against institutions, often seen as "deeper pockets" instead of individuals. Targeting institutions allow attorneys to secure a larger financial settlement or claim.

Simultaneously, many New York victims struggled to find attorneys willing to represent them as the vast majority would only pursue claims against institutions, as the "deep pockets."

In New York, more than 95 percent of cases named institutions as defendants.

These windows should ideally help make a defendant whole **and** deter future abuse. Allowing individuals to pursue a claim against an institution that followed the rules of their time will do little to deter future abuse; they conducted themselves as was required of them. If an agency closes its doors though, **it will have the adverse result of decreasing the amount of supports presently available to victims of abuse.**

IMPACT

Considering the potential impact this law will have on Pennsylvania, it must be carefully crafted and balanced.



ChildUSA estimates that Pennsylvania will likely see a range of 300-900 claims in public schools alone

The Susquehanna Valley Center for Public Policy estimates that a 2-year window in Pennsylvania can result in 10,000 claims against public schools, resulting in a **\$32.5 BILLION** impact to Pennsylvanians



NY's two year revival window resulted in approximately **10,857 CLAIMS**, with the first reported jury verdict reaching \$25 million.

When New Jersey opened a similar window between 2019-2021 **1,200+ LAWSUITS** were filed

Although California struggled to tally the number of cases filed during its statute of limitations pause, they found:

2,000+ lawsuits filed against the Catholic church alone

About 100 lawsuits were filed against the Los Angeles Unified School District

RECOMMENDATIONS

Other states have included provisions in their statute of limitations laws to help protect against frivolous claims when implemented. **Pennsylvania should consider similar provisions to curtail against rampant abuse of the law.**



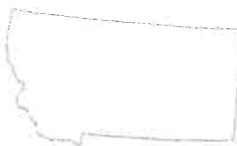
The New York Child Victims Act **started with a one-year window on their statute of limitations;** the legislature later extended the window due to pandemic-related concerns.

Rhode Island's statute, **limits a perpetrator as the individual who caused the harm, not the institution itself.** Defining a perpetrator as an individual can decrease the likelihood of frivolous lawsuits by individuals seeking only financial gain.



Michigan opened the statute of limitations **only in response to specific incidents.** In 2018, for example, they opened a 90-day window against Michigan State University and Dr. Larry Nassar who abused girls for nearly 20 years prior.

California required every plaintiff age 40+ to have a **certification from a mental health professional that there is a "reasonable basis to believe" that sexual abuse occurred,** established by the legislature to specifically weed out false claims. Also, lawsuits cannot publicly name defendants without judge approval. Until then, **institutions and individuals are anonymous in filings.**



In Montana, a survivor can only include an employer or an institution if they could show **1) the institution knew or had reason to know the abuse took place and 2) failed to take action to stop the abuse from occurring again.**

ADDITIONAL CONSIDERATIONS

Pennsylvania also has an opportunity to be a leader by implementing safeguards that both protect the interests of survivors while also preserving the integrity of the legislation's intent, including the following:

CAP ON FEES

A percentage cap on attorney's fees after a certain dollar amount will ensure that survivors are directly benefiting from these cases.

- A cap can help ensure that the harmed individual receives the majority of the financial restitution, as the law intended.
- Although about 90 percent of child sex abuse is perpetrated by people who know the child, in NY the vast majority of cases filed were against institutions as the deepest pockets.
- This provision will not only deter the practice of unnecessarily pursuing cases against institutions only, it will also uphold the safety net of services available to support victims.



VICTIMS COMPENSATION FUND

A designated victims compensation fund will help support individuals in need of financial assistance.

- A survivor within this population may not be eligible for other victims compensation funds due to the passage of time, or other requirements.
- A victims compensation fund for this population can be a fund of last resort, which supplements other pre-existing state sources of funding, such as the sexual assault counseling claims fund.
- Establishing a victims compensation fund for this group will require a designated funding source.



REQUIRE STRUCTURED SETTLEMENTS

Mandatory structured settlements help survivors earmark funding to receive the services they desperately need.

- Individuals with childhood abuse have sustained significant trauma and experience other unique needs as a result of their abuse.
- Financial restitution will not make a person whole overnight. Rather, structured funding will allow them to access much-needed services over time to advance their recovery.



ABOUT PCCYFS

The Pennsylvania Council of Children, Youth and Family Services (PCCYFS) is the collective voice for private agencies that serve Pennsylvania's children and their families. PCCYFS represents nearly 100 private agencies employing more than 12,000 professionals statewide.