

# Vindication for Victims: A Proposal to Eliminate the Civil Statute of Limitations for Minor Sexual Abuse Claims in Iowa

*Samantha S. Rose\**

*ABSTRACT: The Iowa legislature eliminated the criminal statute of limitations for minor sexual abuse claims in 2021. However, the Iowa legislature did not extend or eliminate the civil statute of limitations for minor sexual abuse claims, leaving the statute of limitations at one year after the victim reaches eighteen. This short statute of limitations severely restricts victims from bringing claims. It also limits society's ability to identify perpetrators and protect potential future victims. This Note advocates for the elimination of the civil statute of limitations for minor sexual abuse claims in Iowa to afford adequate relief for victims throughout their adulthood. In the event that an elimination of the statute of limitations is too expansive, this Note also presents two proposals to extend the civil statute of limitations to either thirty-five or five years after the victim turns eighteen.*

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\* J.D. Candidate, The University of Iowa College of Law, 2023; B.A., William Jewell College, 2020. I would like to thank my husband, Jesse Rose, for his support throughout my law school career. Additionally, I would like to thank the members of the *Iowa Law Review* for their work on this publication, specifically Jenna Nelson and Nicholas Johnston, esteemed colleagues and treasured friends.

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## INTRODUCTION

Within the past several decades, public events such as the MeToo movement,<sup>1</sup> clergy sexual abuse within the Catholic Church,<sup>2</sup> and the sexual abuse of minors in the Boy Scouts of America<sup>3</sup> have highlighted the serious problem of minor sexual abuse. Due to these recent events, several states are reevaluating statutes of limitations restricting child victims of sexual abuse from bringing claims during their adulthood.<sup>4</sup>

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1. *History & Inception*, ME TOO, <https://metoomvmt.org/get-to-know-us/history-inception> [https://perma.cc/S5KN-3H42].

2. See generally TIMOTHY D. LYTON, *HOLDING BISHOPS ACCOUNTABLE: HOW LAWSUITS HELPED THE CATHOLIC CHURCH CONFRONT CLERGY SEXUAL ABUSE* (2008) (analyzing the role of civil tort litigation in publicizing sexual abuse within the Catholic church and providing retribution to victims); JENNIFER M. BALBONI, *CLERGY SEXUAL ABUSE LITIGATION: SURVIVORS SEEKING JUSTICE* 7–27 (2011) (discussing various points in time since the 1980s in which the Catholic Church has been the subject of international scrutiny for clergy members committing sexual abuse against children).

3. Emily R. Siegel, *Boy Scouts Reach \$850 Million Settlement with Tens of Thousands of Sexual Abuse Victims*, NBC NEWS (July 1, 2021, 7:54 PM), <https://www.nbcnews.com/news/us-news/boy-scouts-reach-850-million-settlement-tens-thousands-sexual-abuse-n1272955> [https://perma.cc/HCX5-UHLS]; Eliana Dockterman, *These Men Say the Boy Scouts' Sex Abuse Problem Is Worse Than Anyone Knew*, TIME (June 1, 2019, 7:00 AM), <https://time.com/longform/boy-scouts-sex-abuse> [https://perma.cc/HC89-4PQH?view-mode=server-side].

4. See Ethan DeWitt, *New Legal Protections for Sexual Assault Victims in N.H. Take Effect This Week*, CONCORD MONITOR (Sept. 26, 2020, 11:33 PM), <https://www.concordmonitor.com/New->

The statistics about minor sexual abuse are staggering. Although estimates vary, approximately one in four girls and one in six boys will be victims of sexual assault in their lifetime.<sup>5</sup> The majority of women who are sexually assaulted throughout their lifetime are assaulted before the age of eighteen,<sup>6</sup> and fifteen to twenty percent of women who are sexually assaulted are assaulted before the age of twelve.<sup>7</sup> For men who are sexually assaulted, almost thirty percent are assaulted at or before the age of ten.<sup>8</sup> Victims at such a young age face a difficult road to seeking retribution, due to the costly and intrusive nature of litigation, as well as short statutes of limitation that limit when a victim can bring suit, especially after reaching adulthood.

In Iowa, sexual abuse committed against minors is a serious and widespread problem. In 2009, “an estimated 5,930 children age[d] 17 or under in Iowa

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protections-for-New-Hampshire-sexual-assault-victims-take-effect-this-week-36448171 [https://perma.cc/N6HT-4B7T]; see also Ian Richardson & Steven Gruber-Miller, *New Iowa Law Eliminates Statute of Limitations for Sex Crimes Committed Against Children*, DES MOINES REG. (May 13, 2021, 5:15 PM), https://www.desmoinesregister.com/story/news/politics/2021/05/12/gov-kim-reynolds-new-iowa-law-statute-limitations-child-sex-crimes-abuse-human-trafficking/5062099001 [https://perma.cc/NVC2-BLQM] (removing statute of limitations for multiple “crimes against children under 18, including sex abuse, incest, sexual exploitation and human trafficking”). Foreign countries have also been initiating reform efforts for the civil statutes of limitations for minor sexual abuse. See generally Ben Mathews & Elizabeth Dallaston, *Reform of Civil Statutes of Limitation for Child Sexual Abuse Claims: Seismic Change and Ongoing Challenges*, 43 U. NEW S. WALES L.J. 386 (2020) (analyzing the recent reform in civil statutes of limitations for minor sexual abuse in Australia).

5. NAT’L SEXUAL VIOLENCE RES. CTR., STATISTICS ABOUT SEXUAL VIOLENCE 1 (2015), https://www.nsvrc.org/sites/default/files/publications\_nsvrc\_factsheet\_media\_packet\_statistics\_about-sexual-violence\_o.pdf [https://perma.cc/UL6E-SBE7]; see also Letter from Marci A. Hamilton, Paul R. Verkuil Chair in Pub. L., Benjamin N. Cardozo Sch. of L., to the Honorable Senator Steve Soddors, Chair of the Senate Judiciary Subcomm., Iowa Statehouse (Feb. 3, 2014) [hereinafter Hamilton Letter], http://sol-reform.com/News/wp-content/uploads/2014/02/Updated\_IO\_WASB3112\_Testimony\_2314\_sent.pdf [https://perma.cc/87PK-FMJX?view-mode=server-side] (stating “at least one in four girls is sexually abused and about one in five boys”); David Finkelhor, Anne Shattuck, Heather A. Turner & Sherry L. Hamby, *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 J. ADOLESCENT HEALTH 329, 332 (2014) (explaining that the reported number of minor sexual abuse includes offenses where the perpetrators are fellow juveniles, as well as offenses committed by adults against children). In reporting statistics on minor sexual abuse, it is important to note that many sexual assaults go unreported, due to a variety of factors including societal stigma and statutes of limitations. Therefore, these statistics undoubtedly do not capture the full story of sexual abuse perpetrated against children, specifically for boys. LYTTON, *supra* note 2, at 43 (“Since many victims never disclose their abuse, these estimates are, by all accounts, low, and there is no way of knowing by just how much.”); see also NAT’L SEXUAL VIOLENCE RES. CTR., *supra*, at 5 (“Only 12% of child sexual abuse is reported to the authorities.”).

6. JESSICA E. MINDLIN & LIANI JEAN HEH REEVES, CTR. FOR L. & PUB. POL’Y ON SEXUAL VIOLENCE, RIGHTS AND REMEDIES: MEETING THE CIVIL LEGAL NEEDS OF SEXUAL VIOLENCE SURVIVORS 17 (2005), https://law.lclark.edu/live/files/6469-rights-and-remedies-meeting-the-civil-legal-needs [https://perma.cc/XT63-VGBB].

7. *Id.*; see also NAT’L SEXUAL VIOLENCE RES. CTR., *supra* note 5, at 1 (“12.3% of women were age 10 or younger at the time of their first rape/victimization.”).

8. NAT’L SEXUAL VIOLENCE RES. CTR., *supra* note 5, at 1.

were victims of sexual violence by either rape or other sexual assault,”<sup>9</sup> and in recent years, child abuse reports, including sexual abuse, have increased in Iowa.<sup>10</sup> Among the fifty states, Iowa ranks seventeenth for the number of victims of child sexual abuse per year.<sup>11</sup> While Texas has the highest number of reported victims, Iowa outpaces Texas for child abuse victims per capita.<sup>12</sup>

This Note advocates that the state of Iowa either eliminate or substantially extend the statute of limitations for civil claims of minor sexual abuse in order to afford adequate relief to victims throughout the state. In Part II, this Note discusses the nature of a civil claim for sexual abuse, including the relevant actors, potential defendants, and available remedies. Part II also details the recent changes in statutes of limitations legislation in Iowa and other states. Part III then explores the rationales behind statutes of limitations, as well as the arguments against restrictive statutes of limitations. Part IV proposes three potential solutions to Iowa’s current statute of limitations: a complete elimination, an extension to thirty-five years after the victim reaches the age of majority, or an extension to five years after the victim reaches the age of majority. Finally, Part V of this Note advocates that the best solution is a complete elimination of the statute of limitations, emphasizing the benefits of this decision, particularly for victims, but also for society to identify the perpetrators and protect children from potential future abuse.

## I. RECENT HISTORY OF STATUTE OF LIMITATIONS LEGISLATION IN IOWA AND OTHER STATES FOR SEXUAL ABUSE CLAIMS

There are two primary ways victims of sexual assault can bring a claim: civil and criminal. This Part addresses Iowa’s short statute of limitations for victims of minor sexual abuse to bring civil claims,<sup>13</sup> contrasted with Iowa’s recent elimination of the statute of limitations to bring criminal claims for minor sexual abuse.<sup>14</sup> This Part also explains the nature of a civil tort claim

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9. JINGZHEN YANG, NI ZHANG, TED R. MILLER & BINNIE LEHEW, COSTS OF SEXUAL VIOLENCE IN IOWA (2009): FINAL REPORT TO THE IOWA DEPARTMENT OF PUBLIC HEALTH 1 (2012).

10. Lee Rood, *Confirmed Child Abuse in Iowa Is Skyrocketing. Here’s Why.*, DES MOINES REG. (May 29, 2018, 10:02 AM), <https://www.desmoinesregister.com/story/news/investigations/readers-watchdog/2018/05/29/iowa-child-abuse-natalie-finn-sabrina-ray-deaths-huge-spike-confirmed-abuse-cases/641048002> [<https://perma.cc/RD9S-FR5F>].

11. *Number of Unique Victims of Child Abuse in the United States in 2020, by State*, STATISTA (Jan. 26, 2022), <https://www.statista.com/statistics/203841/number-of-child-abuse-cases-in-the-us-by-state> [<https://perma.cc/NJ6W-RSHN>] (compiled using data submitted to the National Child Abuse and Neglect Data System).

12. Although Texas is nearly ten times more populous than Iowa, it only has about six and a half times the number of childhood sexual abuse victims as Iowa. *See id.*; *Resident Population of the U.S. in 2021, by State (Including the District of Columbia)*, STATISTA (June 21, 2021), <https://www.statista.com/statistics/183497/population-in-the-federal-states-of-the-us> [<https://perma.cc/XNS4-23QH>].

13. IOWA CODE § 614.8(2) (2022).

14. S.F. 562, 89th Gen. Assemb., 2021 Sess. (Iowa 2021).

for sexual abuse, including the various actors at play, the offenses these claims may be based on, and the unique available remedies to victims.

#### A. *DEFINING KEY CONCEPTS*

This Note focuses on the role of statutes of limitations in limiting victims from bringing claims against perpetrators, particularly in Iowa. Statutes of limitations are “time limit[s] for suing in a civil case, based on the date when the claim accrued.”<sup>15</sup> In the criminal context, statutes of limitations provide, “a window of time that a state has to charge the perpetrator.”<sup>16</sup>

It is also important to understand what a claim for sexual abuse entails, specifically under Iowa law. To bring a civil or criminal claim for sexual abuse in Iowa, the alleged conduct must meet the definition of “sexual abuse” under Iowa law. Iowa Code section 709.1 defines “sexual abuse”:

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
3. Such other person is a child.<sup>17</sup>

In Iowa, the legal age of consent is sixteen.<sup>18</sup> However, Iowa does recognize an exception to the age of consent colloquially referred to as a “Romeo and Juliet” law.<sup>19</sup> The exception permits consensual sexual acts with a fourteen or fifteen-year-old if the person is less than four years older than the fourteen or fifteen-year-old.<sup>20</sup>

15. *Statute of Limitations*, BLACK’S LAW DICTIONARY (11th ed.).

16. *Statutes of Limitations*, RAINN, <https://www.rainn.org/statutes-limitations> [<https://perma.cc/Y6G6-39S8>].

17. IOWA CODE § 709.1.

18. *See id.* § 709.8(1).

19. *Iowa Romeo and Juliet Law*, KEEGAN, TINDAL & JAEGER (Nov. 10, 2020), <https://www.keeganlegal.com/blog/2020/november/iowa-romeo-and-juliet-law> [<https://perma.cc/YH9W-JG57>].

20. IOWA CODE § 709.4(1)(b)(2)(d).

B. THE CIVIL CLAIM AND ITS REMEDIES

After a completed or attempted sexual assault, the victim may seek retribution through criminal or civil means. To instigate a criminal claim, the victim can report the abuse to law enforcement by calling 911 or contacting their local police department directly.<sup>21</sup> After this initial step, the decision lies with the prosecutor to exercise their discretion in bringing the case.<sup>22</sup> Prosecutors have immense control over a criminal charge, especially at this first stage.<sup>23</sup> Scholars explain that “[n]one of the discretionary decisions made by the prosecutor is more critical than the initial decision to prosecute or not.”<sup>24</sup> This decision rests solely on the prosecutors with “no legislative or judicial guidelines on charging,”<sup>25</sup> nor any review of a prosecutor’s decision to refrain from filing any charges.<sup>26</sup>

In criminal cases where the charged offense is sexual assault, prosecutorial discretion is especially important because the cases often rest on “the victim’s credibility.”<sup>27</sup> There is often “little physical evidence . . . to connect the suspect to the crime” as well as a lack of eyewitness testimony.<sup>28</sup> Thus, the case will turn on whether the jury believes the victim or the accused, and the victim’s

21. *Reporting to Law Enforcement*, RAINN, <https://www.rainn.org/articles/reporting-law-enforcement> [https://perma.cc/QYE3-FCC7].

22. Cassia Spohn & David Holleran, *Prosecuting Sexual Assault: A Comparison of Charging Decisions in Sexual Assault Cases Involving Strangers, Acquaintances, and Intimate Partners*, 18 JUST. Q. 651, 652 (2001) (discussing the discretionary role of the prosecutor in criminal charges of sexual assault); see also Tara N. Richards, Marie Skubak Tillyer & Emily M. Wright, *When Victims Refuse and Prosecutors Decline: Examining Exceptional Clearance in Sexual Assault Cases*, 65 CRIME & DELINQ. 474, 480–81, 489 (2019) (identifying characteristics that make prosecutors more or less likely to prosecute a case, such as whether the victim is male or female, the victim’s age, and whether the perpetrator was known to the victim).

23. Spohn & Holleran, *supra* note 22, at 652.

24. *Id.*

25. *Id.*

26. *Id.* (“[A] decision not to file charges ordinarily is immune from review.”).

27. *Id.* at 652–53 (“[T]he character and credibility of the victim is a key factor in determining prosecutorial strategies, one at least as important as ‘objective’ evidence about the crime or characteristics of the defendant. . . . [T]he victim’s character, behavior, and credibility may play an especially important role in charging decisions in sexual assault cases.” (quoting E. Stanko, *The Impact of Victim Assessment on Prosecutor’s Screening Decisions: The Case of the New York County District Attorney’s Office*, in CRIMINAL JUSTICE: LAW AND POLITICS 170 (G. Cole ed., 1988))); NAT’L DIST. ATT’Y’S ASS’N, NATIONAL SEXUAL ASSAULT INVESTIGATION AND PROSECUTION BEST PRACTICES GUIDE 12 (2021), [https://ndaa.org/wp-content/uploads/WPS-Best-Practice-Guide\\_Sexual-Assault-Jan.-2021-REVISED.pdf](https://ndaa.org/wp-content/uploads/WPS-Best-Practice-Guide_Sexual-Assault-Jan.-2021-REVISED.pdf) [https://perma.cc/DSQ9-SAEL] (“[R]esearch indicates that credibility is the single most important component in a law enforcement officer’s investigative decision making, and a prosecutor’s decision to file a case.” (citing Dawn Beichner & Cassia Spohn, *Modeling the Effects of Victim Behavior and Moral Character on Prosecutors’ Charging Decisions in Sexual Assault Cases*, 27 VIOLENCE & VICTIMS 3, 3–24 (2012))).

28. Spohn & Holleran, *supra* note 22, at 653.

credibility is crucial to a conviction.<sup>29</sup> In fact, manuals on best practices for prosecutors advise prosecutors that “[d]uring the initial meeting with [a] victim, a prosecutor should be assessing credibility.”<sup>30</sup> Prosecutors typically bring charges only “in cases where the odds of conviction are high,”<sup>31</sup> and the odds are much higher when prosecutors are confident their victim will appear credible to the judge and/or jury.<sup>32</sup>

Unlike civil claims, the process of bringing a criminal claim takes much of the power away from the victim. When prosecutors place such a high premium on victim credibility, they may discount the effects of trauma on victims of sexual assault.<sup>33</sup> Accurate accounts of sexual assault may never be brought to trial based on initial judgments of witness credibility. If the prosecutor chooses not to file charges or charges a lesser offense than the victim may have chosen, there is no means for the victim to dispute the prosecutor’s decision. The civil claim is an important alternative to criminal court as it provides a victim with more control throughout the litigation process.<sup>34</sup>

Another important difference in civil and criminal claims is the available remedy. Whereas criminal claims can result in the perpetrator’s incarceration, civil claims allow the victim to receive monetary damages. These are measured in terms of both economic damages (medical bills) and non-economic damages (emotional suffering).<sup>35</sup> “The amount of compensation in a sexual assault damage award is built upon physical and psychological treatments costs . . . and on the jury’s assessment of the value of the emotional and related

29. *See id.* (“The likelihood of conviction thus depends primarily on the victim’s ability to articulate what happened and to convince a judge or jury that a sexual assault occurred. Because of this, prosecutors’ assessments of convictability, and thus their charging decisions, rest on predictions regarding the way in which the victim’s background, character, and behavior will be interpreted and evaluated by . . . potential jurors.”); NAT’L DIST. ATTY’S ASS’N, *supra* note 27, at 12 (“Charging decisions, as well as decisions relating to the viability of a case at trial hinge on a prosecutor’s assessment of the believability of a victim, as well as the ‘provability’ of the case.”).

30. NAT’L DIST. ATTY’S ASS’N, *supra* note 27, at 11–12.

31. Spohn & Holleran, *supra* note 22, at 652.

32. *Id.* at 652–53.

33. *See* NAT’L DIST. ATTY’S ASS’N, *supra* note 27, at 12 (“[T]he research is clear that trauma impacts a witness’ ability to accurately recall and relay information about the traumatic event, especially when confronted with a traditional interview setting.” (citations omitted)).

34. ILL. COAL. AGAINST SEXUAL ASSAULT, A GUIDE TO CIVIL LAWSUITS: PRACTICAL CONSIDERATIONS FOR SURVIVORS OF RAPE AND CHILDHOOD SEXUAL ABUSE 2 (2007), <https://icasa.org/docs/legal%20forms/guide%20to%20civil%20lawsuits%20pdf.pdf> [<https://perma.cc/W2PV-6U3H>] (“One of the benefits of a civil lawsuit is that you have more control over the case.”).

35. JAMES T. O’REILLY & MARGARET S. P. CHALMERS, THE CLERGY SEX ABUSE CRISIS AND THE LEGAL RESPONSES 31 (2014).

damage caused by the assault . . .”<sup>36</sup> Through civil remedies, victims can seek recovery for past and future medical and therapy expenses, lost wages and future earnings, as well as other equitable remedies.<sup>37</sup> Therefore, civil claims offer a unique and beneficial option to victims to seek retribution and recovery that criminal claims do not.

The victim in a civil sexual abuse claim has several options for whom to pursue a claim against. The victim can, of course, pursue the perpetrator of the claim, referred to by some as “the assailant.”<sup>38</sup> In a majority of sexual assaults, the perpetrator is someone the victim knows and is close to, usually “an acquaintance, family member, intimate partner, or non-relative well known to the victim.”<sup>39</sup> A claim against the assailant will be based on an intentional tort, such as assault, battery, false imprisonment, and/or transmission of a sexually transmitted disease.<sup>40</sup> In addition to pursuing a claim against the assailant, the victim may bring claims against accomplices and third parties. These third parties can include the assailant’s employer, as was the case with the many accounts of priests abusing children in the Catholic church.<sup>41</sup> A claim against a third party is often based upon theories of vicarious liability.<sup>42</sup>

C. *THE CIVIL STATUTE OF LIMITATIONS IN IOWA AND RECENT CHANGES IN THE CRIMINAL CONTEXT IN THE STATE*

In Iowa, the road to retribution is narrow because the statute of limitations for civil claims of minor sexual abuse in Iowa is restrictive.<sup>43</sup> As mentioned earlier, the time period for statutes of limitations is usually measured beginning at the date of the harm.<sup>44</sup> However, in Iowa, the statute of limitations for a claim of harm that occurred when the victim was a minor

36. *Id.*; MINDLIN & REEVES, *supra* note 6, at 112 (“The goal of damages in tort actions is to make the injured party whole through the substitutionary remedy of money to compensate for tangible and intangible losses caused by the tort.”).

37. MINDLIN & REEVES, *supra* note 6, at 112–13.

38. *Id.* at 104.

39. *Id.* at 20; Hamilton Letter, *supra* note 5 (“[T]he majority of victims are victims of incest.”); see also HOWARD N. SNYDER, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 10 (2000), <https://bjs.ojp.gov/content/pub/pdf/saycrlr.pdf> [<https://perma.cc/P8KM-K2T2>] (“Sixty percent of all sexual assault offenders were classified by law enforcement as acquaintances of the victim. Just 14% of offenders were strangers to their victims.”).

40. MINDLIN & REEVES, *supra* note 6, at 104.

41. See generally O’REILLY & CHALMERS, *supra* note 35 (analyzing the role of civil tort litigation in providing remedies to victims of sexual assault within the Catholic Church).

42. MINDLIN & REEVES, *supra* note 6, at 105.

43. See THOMSON REUTERS, *Statutes of Limitations for Intentional Torts*, in 50 STATE STATUTORY SURVEYS: CIVIL LAWS: CIVIL PROCEDURE, WESTLAW 0020 SURVEYS 115 (database updated April 2022).

44. O’REILLY & CHALMERS, *supra* note 35, at 62 (“Today it is well settled that an act of physical injury, rape, forcible intercourse, etc. ‘starts the clock running’ on the window of time for a lawsuit to be filed against the offender.”); MINDLIN & REEVES, *supra* note at 6, at 116 (“[T]ime starts to run at the time the ‘harm’ occurred, *i.e.*, when the sexual violence occurred.”).

begins at the date the victim reaches the age of majority.<sup>45</sup> Iowa mandates that civil claims of minor sexual abuse be brought “one year from and after attainment of majority.”<sup>46</sup> Victims have one year after turning eighteen and are barred from bringing civil claims after turning nineteen.<sup>47</sup> The current statutory language is provided below:

Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, or chapter 216, 659A, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.<sup>48</sup>

Though the civil statute of limitations is short, the Iowa Code includes a discovery period for adults who do not discover the sexual abuse committed against them as a child until after the statute of limitations would have lapsed.<sup>49</sup> Iowa Code section 614.8A explains Iowa’s discovery period, stating that,

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.<sup>50</sup>

Thus, while the one-year statute of limitations applicable to most civil claims of minor sexual abuse is not in effect, the discovery period is still limited to four years. Studies show that this timeframe severely underestimates the time it takes for adults to both process this information and decide to come forward and litigate.<sup>51</sup>

In contrast to its work in the civil space, Iowa has recently made substantial changes in its criminal law regarding the ability of victims of sexual assault to bring charges. On May 12, 2021, Iowa passed Senate File 562, which eliminated the criminal statute of limitations for victims of sexual abuse that occurred when the victim was a minor.<sup>52</sup> Senate File 562 passed

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45. IOWA CODE § 614.8(2).

46. *Id.*

47. *See id.*

48. *Id.*

49. *Id.* § 614.8A.

50. *Id.*

51. *See infra* Section III.A.

52. S.F. 562, 89th Gen. Assemb., Reg. Sess. (Iowa 2021). Senate File 562 amended Iowa Code section 802.2 to now read: “An information or indictment for sexual abuse in the first,

“unanimously in the Iowa Senate and by an 84-2 vote in the House.”<sup>53</sup> When Iowa Governor Kim Reynolds signed the bill into law, she proclaimed “[t]oday, Iowa stands in support of survivors of sexual violence as we become the fourteenth state to eliminate the statute of limitations for these heinous crimes.”<sup>54</sup> Before the passage of Senate File 562, the criminal statute of limitations in Iowa for sexual abuse of minors was limited to fifteen years after the minor turned eighteen.<sup>55</sup> In her proclamation, Governor Reynolds emphasized that the new law was aimed at “hold[ing] more abusers accountable for their crimes.”<sup>56</sup> Kimberly Gleason, a survivor of child sexual abuse and advocate for the new law, stated that victims’ “trauma . . . will no longer outlive their ability to pursue criminal charges against their offenders,” potentially pointing to reasons why the state focused this bill on amending only the criminal—and not the civil—statute of limitations.<sup>57</sup>

Senate File 562 also contained an amendment allowing a civil claim for minor sexual abuse when the perpetrator is an adult with a position that provides “training or instruction” to a minor.<sup>58</sup> This claim must “be brought within five years of the date the victim was last treated by the counselor or therapist, or within five years of the date the victim was last enrolled in or attended the school.”<sup>59</sup> These recent decisions have reenergized the conversation and work across the state to address victim retribution, accomplished in part through civil litigation.

In response to the passage of Senate File 562, Iowa is seeing bipartisan support to continue the necessary work of extending statutes of limitations. Iowa Representative Brian Lohse, a Republican, “said he’s open to having conversations about extending or eliminating the civil statute of limitations

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second, or third degree committed on or with a person who is under the age of eighteen years may be commenced *at any time after the commission of the offense.*” IOWA CODE § 802.2(1) (emphasis added); *see also* Richardson & Gruber-Miller, *supra* note 4 (legislation covered crimes for “sexual abuse, incest, sexual exploitation and human trafficking”).

53. Richardson & Gruber-Miller, *supra* note 4.

54. *Id.*

55. Iowa S.F. 562 (acknowledging the previous language of Iowa Code section 808.2(1) read: “An information or indictment for sexual abuse in the first, second, or third degree committed on or with a person who is under the age of eighteen years shall be found within fifteen years after the person upon whom the offense is committed attains eighteen years of age . . .”).

56. *Gov. Reynolds Signs Bill Eliminating Statute of Limitations for Child Sex Abuse Cases*, KWWL (May 12, 2021), [https://www.kwwl.com/news/politics/gov-reynolds-signs-bill-eliminating-statute-of-limitations-for-child-sex-abuse-cases/article\\_c49d6461-3984-5c2a-b79b-9fd5dd2f9b4c.html](https://www.kwwl.com/news/politics/gov-reynolds-signs-bill-eliminating-statute-of-limitations-for-child-sex-abuse-cases/article_c49d6461-3984-5c2a-b79b-9fd5dd2f9b4c.html) [<https://perma.cc/KUL8-F2KK>].

57. *Id.*

58. Iowa S.F. 562. Iowa Code section 614.1(12) also includes a civil claim for “[s]exual abuse or sexual exploitation by a counselor, therapist, [or] school employee,” as it did before the addition of a civil claim against an “adult providing training or instruction” in 2021. *Id.*; IOWA CODE § 614.1(12).

59. Iowa S.F. 562; IOWA CODE § 614.1(12).

next year.”<sup>60</sup> Representative Christina Bohannon, a Democrat and Professor at the University of Iowa College of Law, explained, “that to further assist victims, Iowa should also lengthen the *civil* statute of limitations for child abuse cases.”<sup>61</sup>

This type of legislation has been considered before. In 2014, the Iowa legislature considered a proposal, Senate File 2109, to extend its civil statute of limitations for adults bringing a claim of minor sexual abuse to twenty-five years from when the victim reaches the age of majority.<sup>62</sup> The Senate passed the bill forty-nine to zero.<sup>63</sup> The bill then passed the House subcommittee, but ultimately died in the House.<sup>64</sup> It is unclear exactly why the Iowa House did not pass the bill after unanimous support in the Senate.

Though Iowa did not pass Senate File 2109 in 2014, the recent decision to eliminate the criminal statute of limitations for minor sexual abuse shows that the bill could gain more support today. When it was introduced, Senate File 2109 also proposed to extend the criminal statute of limitations for adults bringing a criminal claim of minor sexual abuse.<sup>65</sup> Although this failed in 2014,<sup>66</sup> the state has now gone farther than extending the statute of limitations by eliminating its criminal statute of limitations for minor sexual abuse.<sup>67</sup> This recent decision demonstrates the changing landscape concerning statutes of limitations in Iowa and encourages reintroduction of legislation such as Senate File 2109.

In 2021, the Senate again tried to introduce legislation to amend the civil statute of limitations.<sup>68</sup> Senate File 32 proposed an elimination of the statute of limitations for minor sexual abuse committed by counselors, therapists, or school employees as well as an elimination of the statute of limitations for all minor sexual abuse.<sup>69</sup> Though this bill died in subcommittee, it demonstrates the willingness of Iowa representatives to bring forth such

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60. Richardson & Gruber-Miller, *supra* note 4.

61. *Id.* (emphasis added). Iowa Senate Majority Leader, Janet Petersen, a Democrat, commented on the proposed changes to the criminal statute of limitations that “[Iowa] still ha[s] a lot of work to do to improve civil statute of limitations laws that protect hidden predators living amongst us.” James Q. Lynch, *Iowa Set to Remove Limits on Prosecuting Sexual Abuse of Minors*, GAZETTE (May 7, 2021, 5:35 PM), <https://www.thegazette.com/article/iowa-set-to-remove-limits-on-prosecuting-sexual-abuse-of-minors> [<https://perma.cc/8SWP-UQVG>].

62. S.F. 2109, 85th Gen. Assemb., Reg. Sess. (Iowa 2014) (successor to S.S.B. 3112).

63. *Iowa Senate Bill 2109 (Prior Session Legislation)*, LEGISCAN, <https://legiscan.com/IA/bill/SF2109/2013> [<https://perma.cc/gLK3-SX6G>].

64. *See id.*

65. Iowa S.F. 2109.

66. *Iowa Senate Bill 2109 (Prior Session Legislation)*, *supra* note 63.

67. S.F. 562, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

68. S.F. 32, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

69. *Id.*

legislation in support of victims of minor sexual abuse.<sup>70</sup> Additionally, it demonstrates the continued work necessary to create bipartisan support for an elimination or extension of the civil statute of limitations for minor sexual abuse.

*D. STATE-BY-STATE ACTION TO ADDRESS STATUTES OF LIMITATIONS ON CIVIL CLAIMS OF SEXUAL ASSAULT*

Although Iowa has neither extended nor eliminated its civil statute of limitations for victims of minor sexual abuse, other states have recently taken steps to do so. In 2020, New Hampshire introduced Senate Bill 508,<sup>71</sup> which proposed changing the civil statute of limitations from twelve years after the victim turns eighteen to permitting the victim to “commence a personal action at any time.”<sup>72</sup> This bill came in response to rampant sexual assault within the state—one in four women in the state reported to be victims of sexual assault<sup>73</sup> and one in twenty men in the state.<sup>74</sup> New Hampshire ultimately passed Senate Bill 508, and the civil statute of limitations was eliminated effective September 18, 2020 as memorialized in section 508:4-g of the New Hampshire Revised Statutes.<sup>75</sup>

Several other states have longer statutes of limitations, with many having no limit for minor sexual abuse.<sup>76</sup> Delaware,<sup>77</sup> Florida,<sup>78</sup> Maine,<sup>79</sup>

70. *Id.*; *Iowa Senate Bill 32*, LEGISCAN, <https://legiscan.com/IA/bill/SF32/2021> [<https://perma.cc/V8DN-EUYH>].

71. S.B. 508, 166th Gen. Ct., Reg. Sess. (N.H. 2020).

72. *Id.*

73. Mia Summerson, *N.H. Senate Bill Would End Statute of Limitations on Sexual Assault Lawsuits*, KEENE SENTINEL (Apr. 5, 2020), [https://www.sentinelsource.com/news/local/n-h-senate-bill-would-end-statute-of-limitations-on-sexual-assault-lawsuits/article\\_8fa7668a-ac4c-5358-b582-c3bd010c3f0f.html](https://www.sentinelsource.com/news/local/n-h-senate-bill-would-end-statute-of-limitations-on-sexual-assault-lawsuits/article_8fa7668a-ac4c-5358-b582-c3bd010c3f0f.html) [<https://perma.cc/4T3E-KCDR?view-mode=client-side&type=image>] (“[O]ne in every four females in the state has been sexually assaulted, with 41 percent of assaults reported to have occurred before the age of 18.”). Additionally, these numbers likely do not capture the full reality of sexual assault in the state as in New Hampshire, “sexual assault was the least likely violent crime to be reported to law enforcement.” *Id.*

74. *Id.* (“[O]ne in every 20 New Hampshire males has been sexually assaulted, with 68 percent of those assaults happening before the victim’s 18th birthday.”).

75. N.H. REV. STAT. ANN. § 508:4-g (Supp. 2021) (effective Sept. 18, 2020); *see also* Eileen O’Grady & Ethan Dewitt, *Senate Passes Bills to Prevent Child Abuse, Eliminate Statute of Limitations in Sex Assault Cases*, CONCORD MONITOR (June 17, 2020, 5:19 PM), <https://www.concordmonitor.com/Senate-votes-on-education-bills-34799629> [<https://perma.cc/P8LH-DD2A?view-mode=client-side&type=image>] (stating the bill empowered New Hampshire residents to “bring any civil case of sexual abuse at any time”).

76. *See Statutes of Limitations for Intentional Torts*, *supra* note 43 (providing fifty-state survey of intentional torts).

77. DEL. CODE ANN. tit. 10, § 8145(a) (2013) (effective July 10, 2007).

78. FLA. STAT. § 95.11(9) (2021) (effective July 1, 2010) (“An action related to an act constituting a violation of s[ection] 794.011 involving a victim who was under the age of 16 at the time of the act may be commenced at any time.”).

79. ME. REV. STAT. ANN. tit. 14, § 752-C(1) (2003 & Supp. | 2022) (approved Apr. 7, 2000).

Minnesota,<sup>80</sup> Nebraska,<sup>81</sup> New Hampshire,<sup>82</sup> and Vermont<sup>83</sup> all permit victims of minor sexual abuse to bring actions at any time following the abuse.<sup>84</sup> Many other states provide statutes of limitations ranging up to forty-five years after the abuse.<sup>85</sup> With a statute of limitations of one year after the minor reaches eighteen, Iowa is among the group of states with the shortest civil statutes of limitations.<sup>86</sup>

## II. EXTENDING STATUTES OF LIMITATIONS: ADDRESSING IOWA'S SHORT CIVIL STATUTE OF LIMITATIONS

This Part analyzes the arguments in favor of and against extending statutes of limitations in civil claims of minor sexual abuse. These arguments are then applied to Iowa to predict the efficacy of altering Iowa's current statute of limitations. While analyzing the negative effects of civil statutes of limitations on victim recovery, this Part also considers the evidentiary and administrative justifications for statutes of limitations in maintaining judicial integrity and protecting defendants.

### A. BARRIERS TO VICTIM RECOVERY

Statutes of limitations create a barrier to litigation for victims when they come forward. Children have a difficult time recognizing the abuse and speaking up for themselves.<sup>87</sup> "When [victims] finally are ready to talk, when they're in their 30s, their 40s, their 50s, they go sit down with a lawyer and the lawyer says, 'Sorry, you're out of luck. You're too late. It's your fault that you can't get justice.'"<sup>88</sup> The average victim of child sexual abuse comes forward at age fifty-two,<sup>89</sup> which would be barred by most statutes of limitations,

80. MINN. STAT. § 541.073, subd. 2(a)(2), subd. 4 (2018) (effective May 25, 2013) (placing no limit for minor sexual abuse unless the claim is predicated on vicarious liability).

81. NEB. REV. STAT. § 25-228(1)(a) (Supp. 2020) (effective Aug. 24, 2017) (placing no limit for victims of minor sexual abuse against the perpetrator).

82. N.H. REV. STAT. ANN. § 508:4-g (Supp. 2021) (effective Sept. 18, 2020).

83. VT. STAT. ANN. tit. 12, § 522(a) (Supp. 2021) (effective July 1, 2019).

84. Guam also has no statute of limitations for child sexual abuse. 7 GUAM CODE ANN. § 11301.1 (2019).

85. *Statutes of Limitations for Intentional Torts*, *supra* note 43.

86. *Id.*

87. Hannah Giorgis, *The Biggest Deterrent to Reporting Child Sexual Abuse*, ATLANTIC (June 26, 2019), <https://www.theatlantic.com/entertainment/archive/2019/06/fixing-statute-limitation-laws-child-sexual-abuse/592627> [<https://perma.cc/9ZCR-EUV8>].

88. *Id.* (quoting Marci A. Hamilton, CEO of CHILD USA and leading expert of statute of limitations reforms for minor sexual abuse).

89. CHILD USA, DELAYED DISCLOSURE: A FACTSHEET BASED ON CUTTING-EDGE RESEARCH ON CHILD SEX ABUSE 3 (2020), <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf> [<https://perma.cc/F2WX-WZNP>] ("[T]he average age at the time of reporting child sex abuse is about 52 years."); Giorgis, *supra* note 87 ("In the United States, about one-third of child-sexual-abuse victims come forward with their allegations before adulthood.

including in Iowa. Professor Marci A. Hamilton, a leading expert in extending and eliminating statutes of limitations in child sexual abuse cases and Founder and CEO of CHILD USA,<sup>90</sup> aptly summarized the primary reasons for extending and eliminating these limits:

- (1) It identifies previously unknown child predators to the public so children will not be abused in the future;
- (2) It gives child sex abuse survivors a fair chance at justice; and
- (3) It cures the injustice wreaked by the current unfairly short statute of limitations that protect child predators and silence child sex abuse victims.<sup>91</sup>

Many of the barriers to victims coming forward are due to societal stigma. For example, “shame, confusion, mistrust, and avoidance of conflict can prevent some victims from reporting the encounter with the abuser.”<sup>92</sup> This is especially prevalent for men and boys, as evidenced by the Catholic church scandal. In the reports of abuse within the Catholic church, the victims were overwhelmingly young boys who waited years after the abuse or until other victims came forward to also share their stories.<sup>93</sup>

The social stigma surrounding sexual abuse can cause victims to delay reporting the abuse.<sup>94</sup> Studies show “that 60-70% of adult survivors said they did not disclose their abuse during childhood.”<sup>95</sup> Often, “[d]elayed reporting of past sexual abuse events may occur years or decades later, when events with certain mental triggers reduce the repressed shame and bring up discussion of the subject, including news media publicity.”<sup>96</sup> An example of this delay in reporting brought on by “an external event” occurred in 2002 when, after media outlets reported on sexual abuse within the Catholic Church, “more than 3,300 reports of past sexual abuse were received by dioceses, far

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Another third disclose far later in life—the median age is 52—and the rest never reveal their past trauma at all.”); Summerson, *supra* note 73 (restating the age of fifty-two as the average reporting age).

90. *Our Team: Devoted to Helping Children*, CHILD USA (2021), <https://childusa.org/management> [<https://perma.cc/5SRN-GZZC>].

91. Hamilton Letter, *supra* note 5.

92. O'REILLY & CHALMERS, *supra* note 35, at 62.

93. See LYTTON, *supra* note 2, at 60 (“[M]ost victims of clergy sexual abuse delay making allegations until many years after the abuse occurred.”).

94. See O'REILLY & CHALMERS, *supra* note 35, at 16.

95. Mathews & Dallaston, *supra* note 4, at 389 (citing Kamala London, Maggie Bruck, Stephen J. Ceci & Daniel W. Shuman, *Disclosure of Child Sexual Abuse: A Review of the Contemporary Empirical Literature*, in CHILD SEXUAL ABUSE: DISCLOSURE, DELAY, AND DENIAL 11, 18–19 (Margaret-Ellen Pipe, Michael E. Lamb, Yael Orbach & Ann-Christin Cederborg eds., 2007)).

96. O'REILLY & CHALMERS, *supra* note 35, at 16; see also BALBONI, *supra* note 2, at 78 (“Several survivors talked about how seeing other survivors in the media triggered their own memories.”).

more than in years before or after.”<sup>97</sup> Delayed disclosure is prominent in child sexual abuse situations and should be considered when determining the lengths of statutes of limitations.

Beyond social stigma, victims face monetary barriers to bringing claims before statutes of limitations lapse. Because victims of child abuse in Iowa must bring a claim by the age of nineteen, they have limited legal access, knowledge, and money to bring a claim. This poses a problem because “[c]ivil litigation is costly, time intensive, emotionally draining, and can greatly sacrifice a victim’s privacy.”<sup>98</sup> Victims of sexual abuse who choose to litigate, “may have to pay some or all of the cost of the suit, which could easily be tens of thousands of dollars.”<sup>99</sup> Furthermore, victims have to worry about the additional cost of retaliatory lawsuits, in which the accused sues the victim based on claims such as defamation or malicious prosecution.<sup>100</sup> The potential of these retaliatory lawsuits alone can prevent victims from coming forward until later on in life, if at all.<sup>101</sup>

Finally, victims delay bringing suits as children or as adults before the statute of limitations lapses because of the potential influence of the abuser. As mentioned earlier, perpetrators are typically people known to the victim.<sup>102</sup> Especially in states such as Iowa where you must file a claim before age nineteen, victims may still live with or be in close contact with their abuser. These barriers to litigation are all reasons why Iowa’s statute necessitates change: victims need longer statutes of limitations, or the elimination of statutes of limitations, to effectively litigate their claims.

#### B. EXTENDING STATUTES OF LIMITATIONS TO PROVIDE RELIEF FOR VICTIMS

Statutes of limitations present significant barriers to victims, as demonstrated above. When state legislatures extend these barriers, there are significant benefits to victims. These benefits include earning monetary relief, ascertaining the truth, and pursuing justice.

There are immense costs associated with being a victim of sexual assault.<sup>103</sup> It is estimated that “[i]ndividual rape victims encounter an estimated lifetime

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97. O’REILLY & CHALMERS, *supra* note 35, at 16 (citing *Judge Orders Trial for Alleged Priest Attacker*, CBS NEWS (Feb. 10, 2011, 2:40 PM), <https://www.cbsnews.com/news/judge-orders-trial-for-alleged-priest-attacker> [<https://perma.cc/CAA5-N8JM>]).

98. MINDLIN & REEVES, *supra* note 6, at 125.

99. ILL. COAL. AGAINST SEXUAL ASSAULT, *supra* note 34, at 2.

100. MINDLIN & REEVES, *supra* note 6, at 128–31.

101. *See id.* at 128.

102. *Id.* at 20.

103. Clark Merrefield, *The Multi-Trillion-Dollar Cost of Sexual Violence: Research Roundup*, JOURNALIST’S RES. (Apr. 19, 2019), <https://journalistsresource.org/economics/economic-cost-sexual-violence> [<https://perma.cc/P7RN-CST8>]. *See generally* Rebecca M. Loya, *Rape as an Economic Crime: The Impact of Sexual Violence on Survivors’ Employment and Economic Well-Being*, 30 J. INTERPERSONAL VIOLENCE 2793 (2014) (explaining how trauma from sexual assault can negatively affect survivors’ employment and economic standing).

economic cost of \$122,461.”<sup>104</sup> Even more shocking, “[t]he average lifetime cost for female and male victims of nonfatal child sexual abuse tops \$282,000.”<sup>105</sup> These values include the cost of medical bills that victims accumulate to treat sexual trauma and related effects such as anxiety and depression.<sup>106</sup> In addition, these values include lost productivity costs.<sup>107</sup> Victims often exhibit trauma responses that negatively affect their employment, including needing to take, “time off to seek counseling” and suffering from “depression, dissociation, and substance abuse.”<sup>108</sup>

The ability to litigate provides victims more than monetary relief. It also allows victims to seek vindication and an apology from the perpetrators and institutions that may have enabled the harmful conduct. One victim explained that they told the abuser’s employer, after the employer failed to reprimand the abuser, “I don’t want any money. I want you to take care of this. . . . *The point of going to the attorney was to get their attention back. To say, ‘You can’t just brush me aside.’*”<sup>109</sup>

C. EXTENDING STATUTES OF LIMITATIONS TO ASSIST WITH IDENTIFICATION OF PERPETRATORS AND PROTECTION OF POTENTIAL FUTURE VICTIMS

When states extend statutes of limitations so victims can retain the option of litigation for a longer period of time, the effects are beneficial for more than just the victims. Extending statutes of limitations creates potential retributive and restorative effects for society, including preventing potential future victims.<sup>110</sup> These additional benefits to society include helping other victims find their voice and autonomy,<sup>111</sup> “building connections within the community,”<sup>112</sup> forcing perpetrators and institutional actors to accept responsibility and apologize,<sup>113</sup> “establishing history” by gathering information,<sup>114</sup> and making the problem public.<sup>115</sup>

An important benefit of extending statutes of limitations is the identification of the perpetrators of sexual misconduct. If victims are never able to litigate,

104. Merrefield, *supra* note 103; Cora Peterson, Sarah DeGue, Curtis Florence & Colby N. Lokey, *Lifetime Economic Burden of Rape Among U.S. Adults*, 52 AM. J. PREVENTIVE MED. 691, 693 (2017).

105. Merrefield, *supra* note 103.

106. *See id.*

107. *Id.*

108. *See* Loya, *supra* note 103, at 2808 (explaining how trauma from sexual assault can negatively affect survivors’ employment and economic standing).

109. BALBONI, *supra* note 2, at 90.

110. *See generally id.* (detailing the beneficial effects of extending statutes of limitations for sexual abuse and permitting more victims to litigate their claims).

111. *Id.* at 32.

112. *Id.* at 33 (discussing how litigation is “a means of building social capital”).

113. *Id.* at 34.

114. *Id.* at 35–36.

115. *Id.* at 36–37.

society may not be aware of abusers. This is particularly important because of the propensity toward recidivism in sex offenders, as “many sex offenders engage in both sexual and nonsexual criminal behavior.”<sup>116</sup> Further, the recidivism rates understate the propensity to reoffend because so many sexual abuse crimes are never reported.<sup>117</sup> This is largely due to statutes of limitations restricting victims from coming forward and causing lawyers and judges to turn away potential claimants. Therefore, it is crucial that states extend their statutes of limitations. This enables society to learn the names of these offenders and puts the justice system on notice to monitor those with the potential to reoffend.

Victims are also aware of these potential benefits of extending statutes of limitations. Survivors of minor sexual abuse reveal complex motivations behind coming forward and choosing to litigate.<sup>118</sup> The survivors’ motivations include establishing the truth in order “to assist other victims by coming forward and telling their stories,”<sup>119</sup> “to alert the larger community,”<sup>120</sup> “to make the [third party organization] bear formal responsibility,”<sup>121</sup> to accurately record the historical abuse within the third party organization,<sup>122</sup> and to change public perception surrounding sexual abuse and victim credibility.<sup>123</sup>

In enlightening and heartbreaking interviews, survivors recounted their goals for coming forward and litigating:

[This litigation] is life-defining, but only because I followed up. If I had left it at [the settlement] it would have been killing. If I had left it at litigation and didn’t get the apology and admission of guilt . . . I have to say, what’s even more important is if we get legislation. It’s much more important than my personal lawsuit. What’s more important is to get external forces involved. . . . It’s about doing something that is larger than your own small world. . . . [We] are working on the legislation, repealing the statute of limitations. I truly would like to see this culture more respectful of children and

116. Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, U.S. DEP’T OF JUST., <https://smart.ojp.gov/somapi/chapter-5-adult-sex-offender-recidivism> [<https://perma.cc/JS2L-YBF5>?view-mode=server-side].

117. *Id.* (“[R]esearchers widely agree that observed recidivism rates are underestimates of the true reoffense rates of sex offenders.”).

118. BALBONI, *supra* note 2, at 39 (“The data for this research were generated through in-depth face-to-face interviews with thirty-five key players in clergy sexual abuse litigation. The final sample is comprised of twenty-two survivors and thirteen advocates. This includes litigants, attorneys[,] . . . social service providers[,] . . . and members of the Church.” (footnote omitted)).

119. *Id.* at 84.

120. *Id.* at 75.

121. *Id.* at 90 (noting that survivors litigate in part to “forc[e] the Church to own up to its own history of neglect, surreptitious behavior, and deceit. Survivors felt a strong need to make the Church bear witness to the consequences of their actions.”).

122. *Id.* at 91.

123. *Id.* at 91–92 (“[L]itigation brought some legitimacy and gravitas to the survivors’ claims.”).

continue to break the silence. . . . [I'm trying to] bring to consciousness about the abuse of children in this country. And the abuse of power.<sup>124</sup>

A scholar of dispute resolution observed:

When we employ a dispute resolution process, such as litigation, we use it in part to obtain a concrete result, such as financial compensation. But we also invoke the process . . . to obtain the community's blessing on our cause: a recognition of its justice, a ratification of our course of action, a vindication, be it public or private. Even when private processes, such as mediation and arbitration, are employed, parties are likely to emerge most satisfied when they have been given 'voice' . . . and when they have been treated as fully enfranchised members of the community.<sup>125</sup>

When survivors come forward and litigate, it does more than provide the victim with monetary relief or vindication. As these survivor interviews show, "the implications of litigation transcend traditional pecuniary gains and move into the realm of building connections within the community."<sup>126</sup> It makes the public more aware of the issue and paves the way for other victims to feel empowered to come forward. However, survivors should not bear the burden of creating meaningful change. Legislatures have the power to enact change through statutes of limitations reform.

#### D. THE CASE FOR STATUTES OF LIMITATIONS

With the many barriers victims face to litigate their claims, it calls into question why states even impose statutes of limitations. There are two primary justifications for statutes of limitations—evidentiary and administrative.<sup>127</sup> The court, and society, has an interest in both the quality and quantity of available evidence, and the longer the victim waits to bring their claim after the initial act causing the harm, the more likely it is that the evidence is not as credible as it was at the harm's outset.<sup>128</sup> The evidentiary justification explains that "as time passes, memories fade and testimony becomes less reliable, evidence deteriorates or is lost, and witnesses are unavailable."<sup>129</sup> The administrative justification posits that "time limits encourage prompt filing of claims and relieve courts of the burden of adjudicating old cases."<sup>130</sup> Delayed filing over

124. *Id.* at 106–07 (some alterations in original).

125. *Id.* at 32 (quoting Robert M. Ackerman, *Disputing Together: Conflict Resolution and the Search for Community*, 18 OHIO ST. J. ON DISP. RESOL. 27, 37 (2002)).

126. *Id.* at 33.

127. LYTTON, *supra* note 2, at 60; *see also* Mathews & Dallaston, *supra* note 4, at 387 (stating that the policy rationales for statutes of limitations include guaranteeing "fresh and available evidence" and "prompt settlement of disputes" in "an efficient court system").

128. LYTTON, *supra* note 2, at 60.

129. *Id.*

130. *Id.*

time makes a claim against a perpetrator more difficult for the jury to adjudicate.<sup>131</sup> It also impedes the perpetrator's access to available evidence with which to defend themselves.<sup>132</sup>

Statutes of limitations quell the court's concerns about evidence deterioration.<sup>133</sup> Evidence deterioration harms both plaintiffs and defendants. When evidence is lost, or has deteriorated, neither side can make their case as effectively. Thus, the evidentiary and administrative justification go hand in hand. Short time limits force people to bring their claims promptly when evidence is most available and reliable.<sup>134</sup> These limits also relieve courts of the burden to take on old cases or becoming overwhelmed by an influx of cases if the legislature were to extend the statute of limitations.<sup>135</sup> The courts do not have capacity to entertain vexatious litigation. Ultimately, proponents of statutes of limitations cite their ability to uphold faith in the justice system.<sup>136</sup>

Finally, statutes of limitations serve to protect defendants. When years and even decades pass after the alleged abusive event, victims often display "uncertainty, even regarding the basic facts of the story," and "the story may change as missing pieces are recovered."<sup>137</sup> This can be difficult to defend against, especially when the defendant's memory, as well as available evidence, may also have deteriorated over time. Additionally, there is concern over false allegations, especially when there is a monetary incentive to lie in civil suits. However, this concern is small, as research estimates "only 2-10% of rape accusations . . . are proven to be fake."<sup>138</sup> While the justice system aims to provide relief to victims, it also must protect the rights of defendants.

The law's protection of defendants is a common critique of statutes of limitations. In contrast, prominent advocacy groups criticize states for keeping statutes of limitations in place for child sexual abuse because the "laws favor the Perpetrators over the Victims."<sup>139</sup> Short statutes of limitations, such as Iowa's, "place[] predators and their enablers in a preferred position to the

131. *See id.*

132. *See id.*

133. *Id.*; Matthews & Dallaston, *supra* note 4, at 387 ("The rationale supporting this justification is that with the passage of time, the quality and availability of evidence declines, through memories fading, documents being lost, physical evidence being destroyed, and witnesses dying or being unlocatable.").

134. LYTTON, *supra* note 2, at 60.

135. *See id.*

136. *See id.* (outlining evidentiary and administrative rationales for statutes of limitations contributing to a healthier judicial system).

137. BALBONI, *supra* note 2, at 77 (citation omitted).

138. Katty Kay, *The Truth About False Assault Accusations by Women*, BBC NEWS (Sept. 18, 2018), <https://www.bbc.com/news/world-us-canada-45565684> [https://perma.cc/JU3E-5MM4?view-mode=server-side]; David Lisak, Lori Gardinier, Sarah C. Nicksa & Ashley M. Cote, *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1318, 1330 (2010).

139. *Ending Statute of Limitations Laws and Child Sexual Abuse (CSA)*, BYSTANDER PROJECT, [https://www.thebystanderproject.org/ending\\_statute\\_of\\_limitations](https://www.thebystanderproject.org/ending_statute_of_limitations) [https://perma.cc/P8QL-3LR7].

victims” and prevent victims from having “their day in court.”<sup>140</sup> An extension or elimination of Iowa’s statute of limitations “would represent a significant policy decision by state legislators to side with victims” over defendants.<sup>141</sup>

### III. PROPOSALS FOR IOWA TO ENACT IN PLACE OF ITS CURRENT STATUTE OF LIMITATIONS LIMITING CIVIL ACTIONS FOR MINOR SEXUAL ABUSE TO ONE YEAR AFTER THE ATTAINMENT OF MAJORITY

Though Senate File 562,<sup>142</sup> which eliminates the criminal statute of limitations for minor sexual abuse claims, is a step toward justice for sexual abuse survivors, Iowa still has a long way to go, specifically in creating adequate civil remedies for victims.<sup>143</sup> This Part proposes and discusses three potential modifications to Iowa’s statute of limitations for minor sexual abuse claims. First, this Part proposes an elimination of the statute of limitations for civil minor sexual abuse claims in the same way Iowa recently eliminated the statute of limitations for criminal actions of minor sexual abuse.<sup>144</sup> Second, this Part proposes two potential extensions of the current statute of limitations, from one year after the victim reaches the age of majority to: 1) thirty-five years from the time the victim reaches the age of majority,<sup>145</sup> or 2) five years from the time the victim reaches the age of majority.<sup>146</sup>

#### A. ELIMINATE THE STATUTE OF LIMITATIONS

The first proposal within this Note is to eliminate the statute of limitations for civil claims of minor sexual abuse. This statute would permit adults, at any age, to bring a civil claim for the abuse inflicted upon them as a child. This proposed statute is the only remedy that truly addresses all the barriers<sup>147</sup> to victims of minor child abuse created by short statutes of limitations.

##### Proposed Statute to Eliminate the Statute of Limitations:

Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, or chapter 216, 659A, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall be *commenced at any time after the commission of the offense*.<sup>148</sup>

140. *Id.*

141. O’REILLY & CHALMERS, *supra* note 35, at 66.

142. S.F. 562, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

143. Richardson & Gruber-Miller, *supra* note 4 (“While the new law eliminates the statute for criminal charges, it does not eliminate the state’s statute of limitations for bringing a civil claim.”).

144. *See infra* Section IV.A.

145. *See infra* Section IV.B.

146. *See infra* Section IV.C.

147. *See supra* Part III.

148. The language in the proposed statute is modeled after Iowa’s current statute (emphasis added to denote change). *See* IOWA CODE ANN. § 614.8(2).

This proposed statute matches Iowa's recent decision to eliminate the criminal statute of limitations.<sup>149</sup> Consistency among the criminal and civil statute of limitations will make it easier for victims to pursue all their avenues for retribution at the same time. Though criminal remedies can provide relief for victims knowing their abuser is being punished, it cannot provide monetary relief. Both civil and criminal remedies are necessary. The most just and practical decision for victims in Iowa is to adopt parallel statutes of limitations.

If Iowa were to adopt this proposed statute, the state's discovery rule<sup>150</sup> would need eliminating as well. The proposed statutory language would eliminate the time limit during which a claim can be brought if the adult, during their adult life, discovers they were the victim of minor sexual abuse:

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought *at any time* from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.<sup>151</sup>

The elimination of the civil statute of limitations for minor sexual abuse claims, coupled with the above change in the discovery period, will provide an adequate civil remedy for victims of minor sexual abuse throughout adulthood.

The recent attempt and failure to enact Senate File 32 in 2021 shows the limitations of the elimination approach.<sup>152</sup> Not only did the bill die in subcommittee in 2021, but the Iowa legislature was also unwilling to take up Senate File 32 in the 2022 legislative session.<sup>153</sup> To receive bipartisan support in Iowa, a bill to extend the statute of limitations may be more realistic than a complete elimination.

*B. EXTEND THE STATUTE OF LIMITATIONS TO THIRTY-FIVE YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY*

The next potential amendment proposes to extend the statute of limitations to thirty-five years after the age of majority. This amendment seeks to address the root problem—adults who were victimized as children but for a variety of reasons were not willing or able to litigate during a limited statute of limitations. As mentioned earlier in Section III.A,<sup>154</sup> the average age for a

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149. Iowa S.F. 562.

150. IOWA CODE § 614.8A.

151. The language in the proposed statute is modeled after Iowa's current discovery period statute (emphasis added to denote change). *See id.* § 614.8A.

152. S.F. 32, 89th Gen. Assemb., Reg. Sess. (Iowa 2021).

153. *Id.*

154. *See supra* Section III.A.

victim of minor sexual abuse to come forward is fifty-two.<sup>155</sup> By extending the statute of limitations to thirty-five years after the victim turns eighteen, Iowa can provide remedies for these victims into adulthood. This statute of limitations would give victims until the age of fifty-three, thereby at least providing a remedy for the average victim of child sexual abuse.<sup>156</sup>

Proposed Statute to Extend the Statute of Limitations:

Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, or chapter 216, 659A, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have *thirty-five (35) years* from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.<sup>157</sup>

This amendment in the statutory text would not require a change to Iowa's discovery period.<sup>158</sup> However, an amendment extending Iowa's discovery period to longer than four years would be reasonable after extending the statute of limitations to thirty-five years.

This extension meets the critical needs of survivors and encompasses the age at which the average victim of minor sexual abuse comes forward. However, this would still restrict about one-third of potential litigants from a civil remedy.<sup>159</sup> Further, this restriction does not entirely meet the needs of society in identifying abusers and protecting potential future victims. Thus, an elimination may be the only true proposal that solves the existing problems to both victims and society.

C. *EXTEND THE STATUTE OF LIMITATIONS TO FIVE YEARS AFTER THE VICTIM REACHES THE AGE OF MAJORITY*

If the Iowa legislature is unwilling to pass either an elimination or a long extension, the legislature should alternatively consider extending the current statute to five years after the victim turns eighteen. As mentioned in Section III.A,<sup>160</sup> a one-year statute of limitations is a financial barrier to many young adults.<sup>161</sup> Additionally, because abusers are typically known to

155. CHILD USA, *supra* note 89, at 3; Giorgis, *supra* note 87; Summerson, *supra* note 73.

156. In New York, children's advocacy groups "persuade[d] New York state legislators to" extend the civil statute of limitations "to age 55." Giorgis, *supra* note 87. This proposed statute would reach a similar age and would thus follow the work of other states. *Id.*

157. The language in the proposed statute is modeled after Iowa's current statute, but extends the statute of limitations from one year after the age of majority to thirty-five years after the age of majority (emphasis added to denote change). See IOWA CODE § 614.8A.

158. *Id.* § 614.8A.

159. See Giorgis, *supra* note 87.

160. See *supra* Section III.A.

161. See MINDLIN & REEVES, *supra* note 6, at 115-18.

the victim,<sup>162</sup> many young adults are still in close contact or under the influence of their abuser at age nineteen. An extension from one year after the age of majority to five years after the age of majority aims to solve these critical issues facing young adults in seeking civil relief and retribution. The statute below amends the current Iowa statute, Iowa Code section 614.8(2), to extend the statute of limitations from one year to five years after the victim reaches the age of majority.

Proposed Statute to Extend the Statute of Limitations:

Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, or chapter 216, 659A, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have *five (5) years* from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.<sup>163</sup>

This amendment in the statutory text would not require a change to Iowa's discovery period, which permits victims who discover the abuse as adults to bring the claim within four years of the discovery.<sup>164</sup>

Though this proposed statute solves some of the issues facing victims of minor sexual abuse, it would still restrict many adults who want to come forward later in life. Additionally, many of the issues raised above, such as financial barriers and the influence of the abuser on the victim, may be just as present at age twenty-three as they are at nineteen. An extension to five years would be a step in the right direction for Iowa, but it ultimately fails to provide an appropriate solution to the greater problem.

#### CONCLUSION

Iowa should eliminate its civil statute of limitations for minor sexual abuse claims in the same way it eliminated its criminal statute of limitations in 2021. This decision would mark a change in the legislature toward empowering victims and protecting the public, instead of shielding perpetrators of sexual abuse through short and restrictive statutes of limitations. If Iowa chooses not to eliminate the civil statute of limitations for minor sexual abuse claims, the state should instead extend the civil statute of limitations to thirty-five years after the victim reaches the age of majority. This amendment to the current statute would provide remedies to many victims of sexual abuse long into their adulthood. It also encompasses the average victim of sexual assault who comes

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162. *Id.* at 20.

163. The language in the proposed statute is modeled after Iowa's current statute but extends the statute of limitations from one year after the age of majority to five years after the age of majority (emphasis added to denote change). IOWA CODE § 614.8(2).

164. *Id.* § 614.8A.

forward at age fifty-two. Further, this remedy still protects defendants and the courts from having to litigate cases in which there is a lack of available evidence that has not deteriorated over time. Statutes of limitations are used against the victims who have already suffered at the hands of abusers and the institutions that support them. Iowa must act to eliminate these restrictive statutes to show its commitment to victims, especially in the wake of such public, widespread, and ongoing accounts of sexual abuse.