



SEXUAL ABUSE LITIGATION & COVERAGE CONFERENCE

NEW YORK CITY BAR ASSOCIATION | OCTOBER 17, 2024

SEXUAL ABUSE LITIGATION, LEGISLATIVE UPDATES, AND TRENDS



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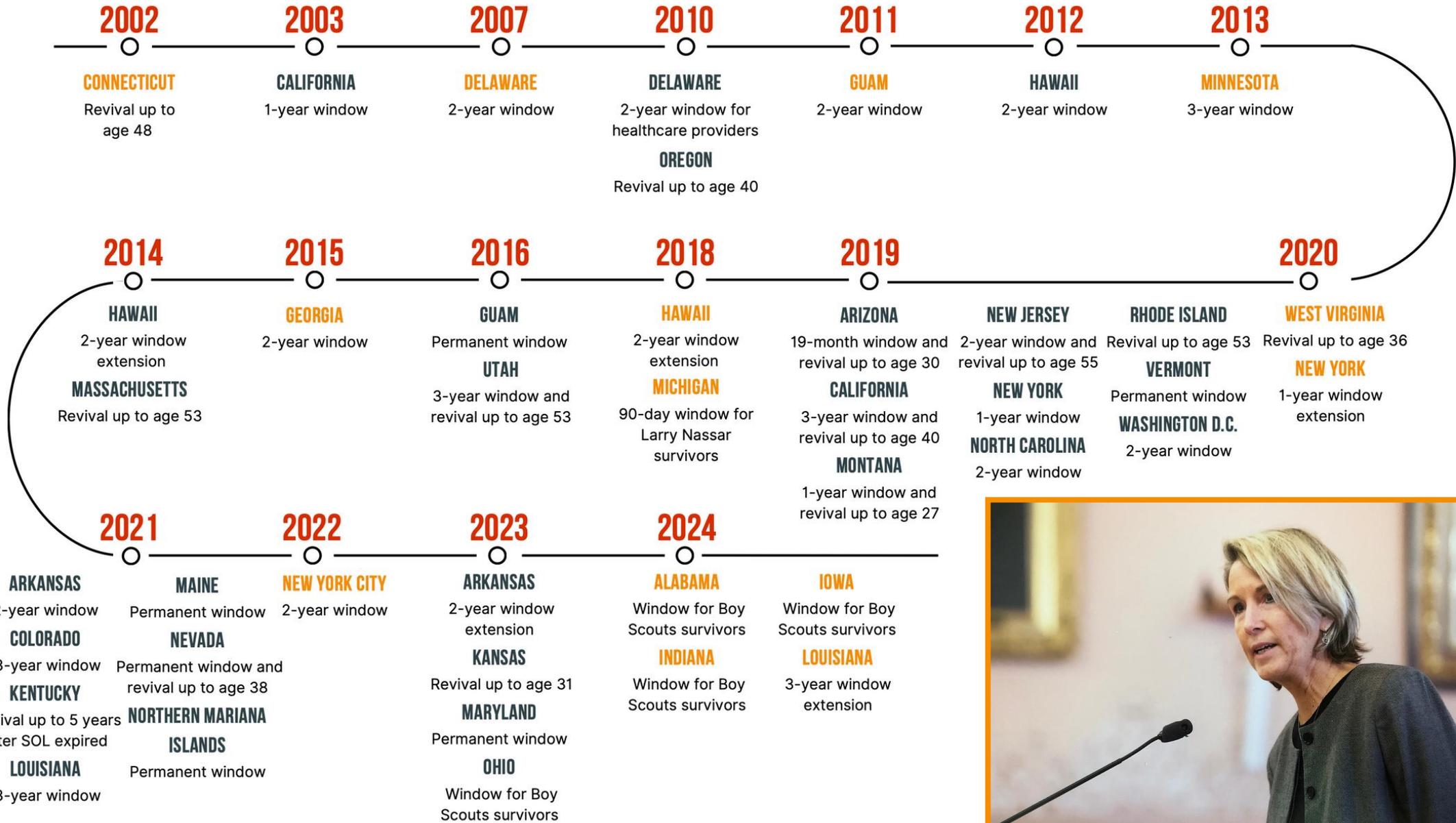
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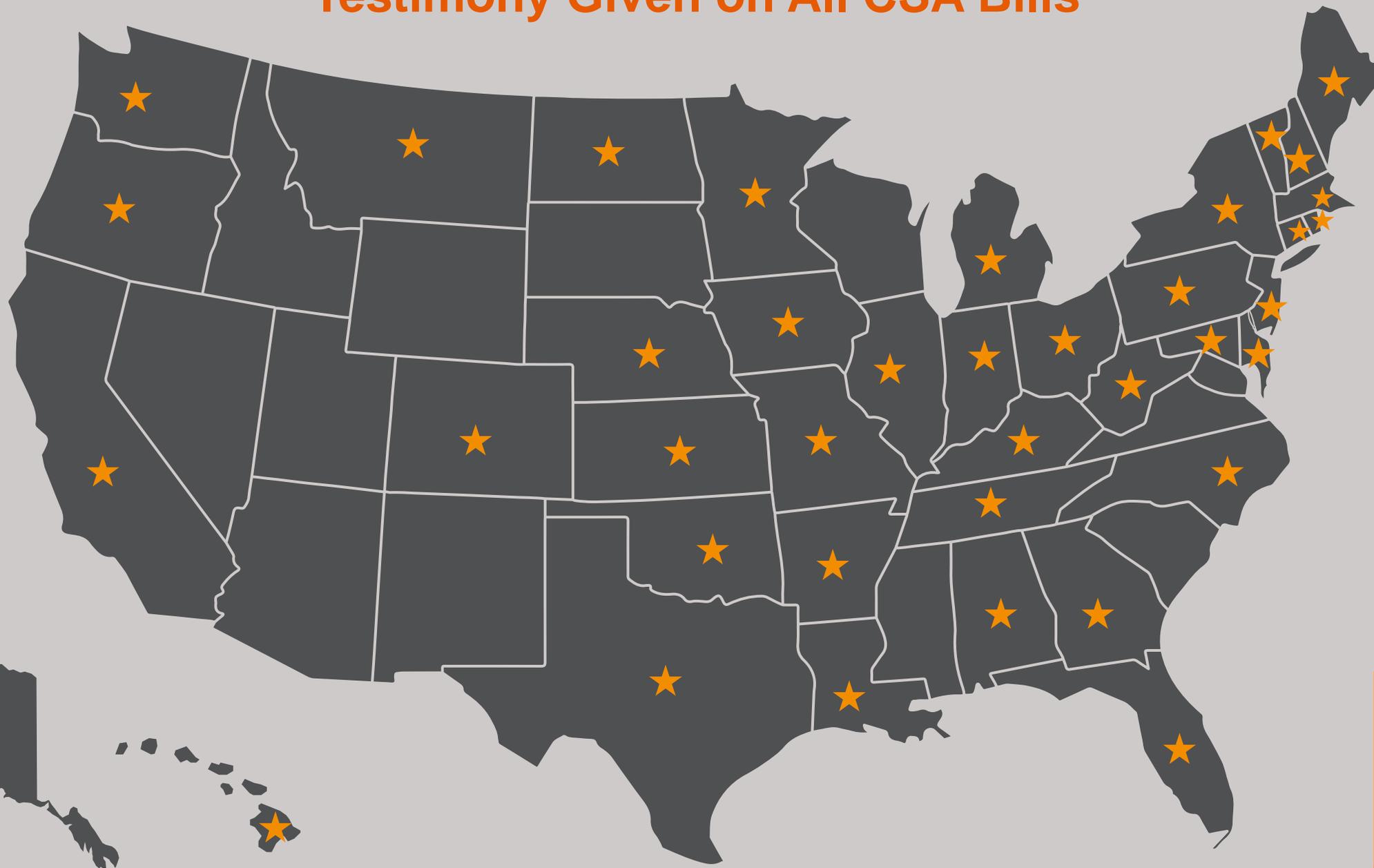
CHILDREN'S JUSTICE CAMPAIGN

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Testimony Given on All CSA Bills



CHILDREN'S
JUSTICE
CAMPAIGN



so kids can be kids

TYPES OF SOL BILLS FOR CSA

| | |
|---|--|
| Age Extension | Extends the SOL for Child Sexual Abuse Claims Prospectively. |
| Elimination | Removes the SOL for Child Sexual Abuse Claims Prospectively |
| Window (Revival period) | It opens up a period of time for barred claims retroactively. |
| Age Extension with Revival | Extends the SOL for Child Sexual Abuse Claims to a certain age with the revival of claims for victims within that age extension. |
| Permanent Window | It Opens Up the Time for Victims to file a Claim Permanently |
| Narrow Window | Opens Up a Period of Time to file a claim but only for specific Defendants (Larry Nasser and Boy Scouts of America) |
| Elimination with a Permanent Window <i>(VT, ME, MD, Guam & NMI)</i> | The “Zero Tolerance” policy on Child Sexual Abuse Claims. Anyone who sexually abuses a child or causes a child to be sexually abused will be liable—looking Forwards and Backwards on Child Protection. |



Elimination and Revival Laws

19 states, 2 territories, and
the federal gov. have
ELIMINATED the civil SOL
for some or all CSA claims

AR, AK, AZ, CA, CO, CT, DE, FL, IL, LA, ME,
MD, MN, NE, NV, NH, UT, VT, WA, Fed, NMI,
& Guam

21

JURISDICTIONS

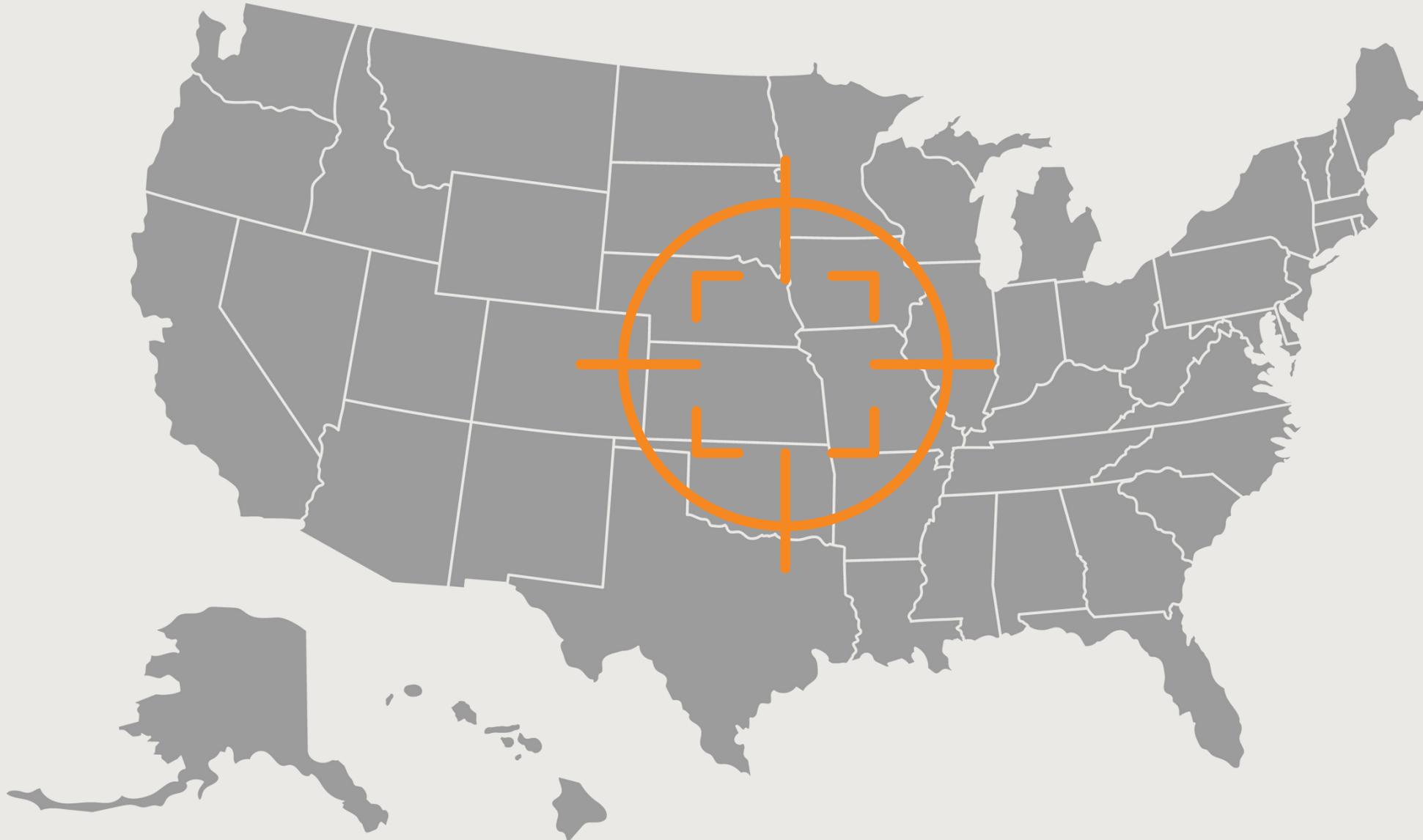
30 states and 3 territories
have **REVIVAL/WINDOW**
legislation for expired civil
CSA claims

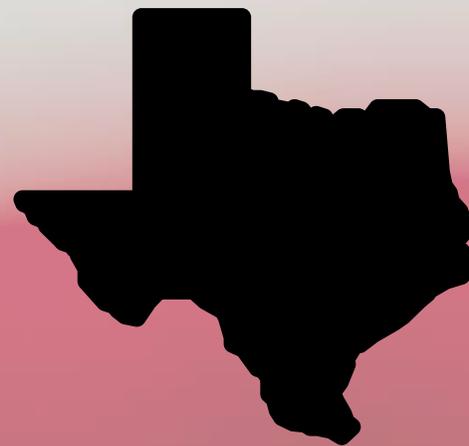
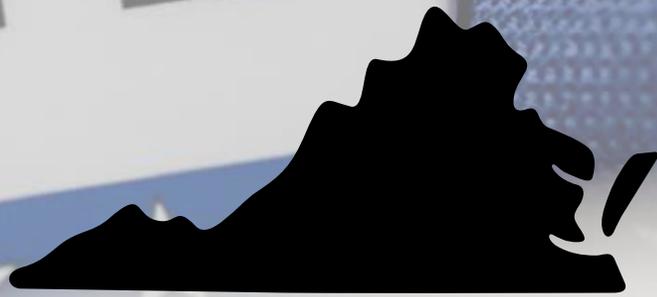
AL, AZ, AR, CA, CO*, CT, DE, GA, HI, IN, IA, KS,
KY, LA, ME, MD, MA, MI, MN, MT, NV, NJ, NY, NC,
OH, OR, RI, UT*, VT, WV, DC, NMI, & Guam

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JURISDICTIONS

**We have Several States in Our Crosshairs
for the Upcoming Legislative Session**





We will not stop until we remove the FOUR SHIELDS that protect predators and negligent institutions, while endangering children.





NATIONAL CHILDREN'S JUSTICE CAMPAIGN

enoughabuse.org



So Kids Can Be Kids



Kathryn Robb, Esq. National Director, Children's Justice Campaign, Enough Abuse



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Sexual Abuse Litigation

AMY H. CRAFT, OF COUNSEL



Summary

- ▶ BOOMING.
- ▶ Significant increase in past ten years, particularly involving state-run institutions and foster care systems.

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Joshua Lewis

Perpetrator Alert: Joshua Lewis was recently arrested on charges of communicating with a minor for immoral purposes. detectives believe there are more victims

Sexual Abuse Survivors

- Doctor Sexual Abuse
- Boy Scouts Sexual Abuse
- Church and Priest Sexual Abuse

Other Forms of Advertisement

Tik Tok

Instagram

Prison
Posters

Websites

Key Settlements and Verdicts



1. \$18M Settlement (2024): Involving two sisters abused by their foster father. Agencies ignored warnings.

2. \$9.35M Settlement (2023): Three children abused in foster care, failure to monitor foster environment.

3. \$7.5M Verdict (2024): Former YMCA camper sexually abused at a summer camp.

4. \$10.5M Settlement (2024): Group home survivors abused in state-run institutions.

Wolf v. State: Sept. 7, 2023

- ▶ The court held that in a case against an entity, such as the State, **the statute of limitations on a childhood sexual abuse case does not begin to run until the victim knows his or her injuries were *caused* by such entity's negligence.**
- ▶ Prior to this decision, under [RCW 4.16.340](#), it was understood that a victim of childhood sexual abuse had three years from the time they connected the abuse itself to their resulting injuries. Now, survivors have three years from the time they connect that those injuries to an entity's negligence (such as the state, a school, church or others).



Henderson v. Thompson: WA Supreme Court 2022

RACIAL BIAS IN CIVIL TRIALS: THE COURT RULED THAT IF THERE IS ANY EVIDENCE SUGGESTING RACIAL BIAS COULD HAVE INFLUENCED THE VERDICT, THE TRIAL COURT MUST HOLD AN EVIDENTIARY HEARING. DURING THIS HEARING, IT IS PRESUMED THAT RACIAL BIAS PLAYED A ROLE, AND THE BURDEN SHIFTS TO THE PARTY BENEFITING FROM THE VERDICT TO PROVE THAT BIAS DID NOT AFFECT THE OUTCOME. IF THEY FAIL TO DO SO, THE COURT MUST ORDER A NEW TRIAL.

New Legislation

- ▶ 1. House Bill 1618 (2024): Eliminates statute of limitations for childhood sexual abuse claims, allowing survivors to file lawsuits at any point after their abuse.
- ▶ Signed by Governor Jay Inslee on March 26, 2024.

Conclusion

- ▶ Cases are very easy to file. Difficult to defend.
 - ▶ No Statute of Limitations
 - ▶ Little Evidence Needed
 - ▶ Sympathetic jurors



Mediation in Sexual Abuse Litigation

David Inscho, Esq.

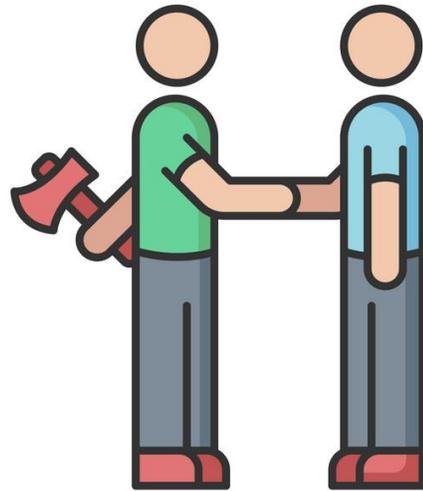
Partner

Kline and Specter, PC

MEDIATION =



Why do we need to mediate?



DISTRUST

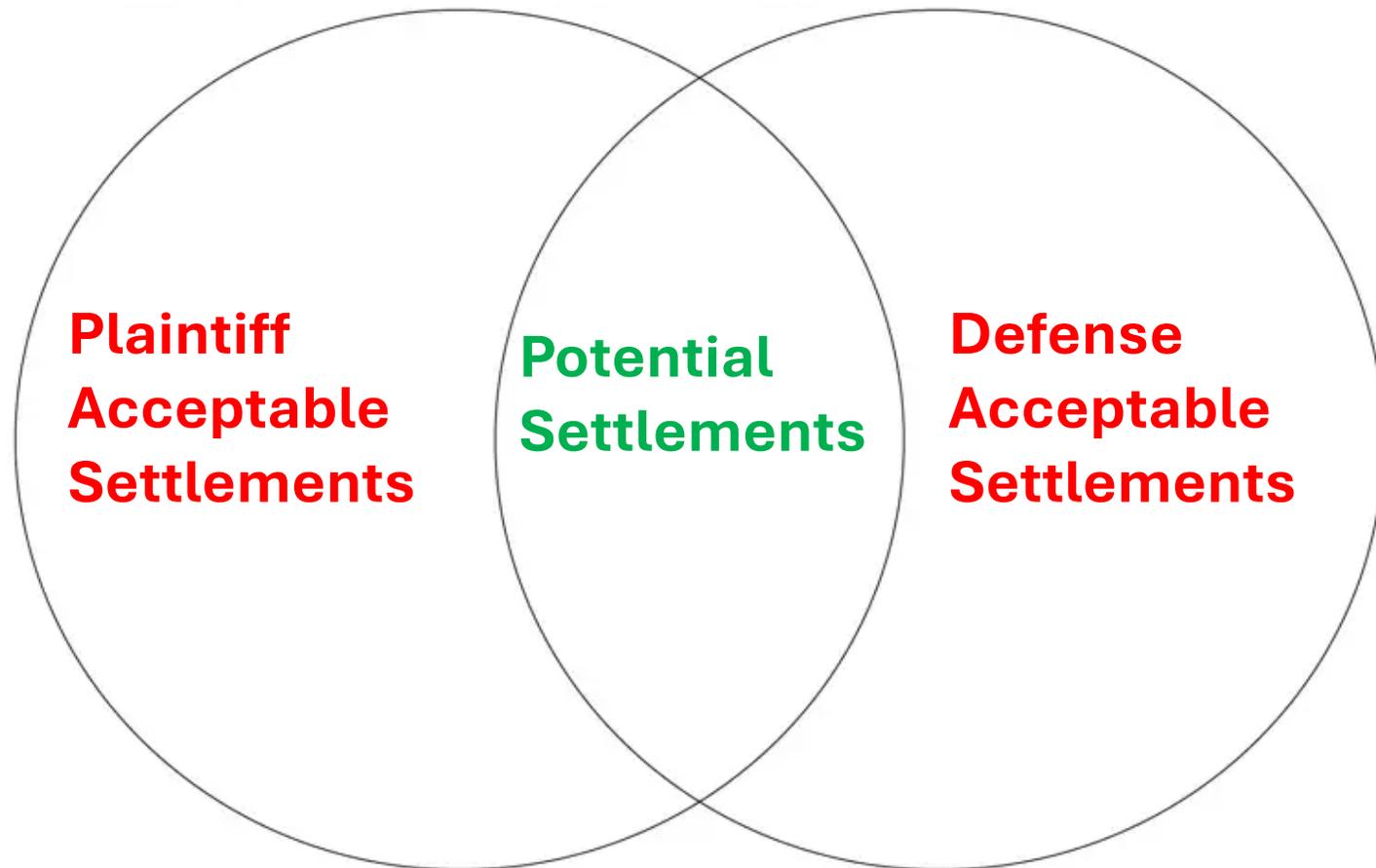
Mediation is on the rise

- Assumed part of the litigation process
- Courts see mediation as a fix for backlogs
- Sexual abuse cases are difficult to value

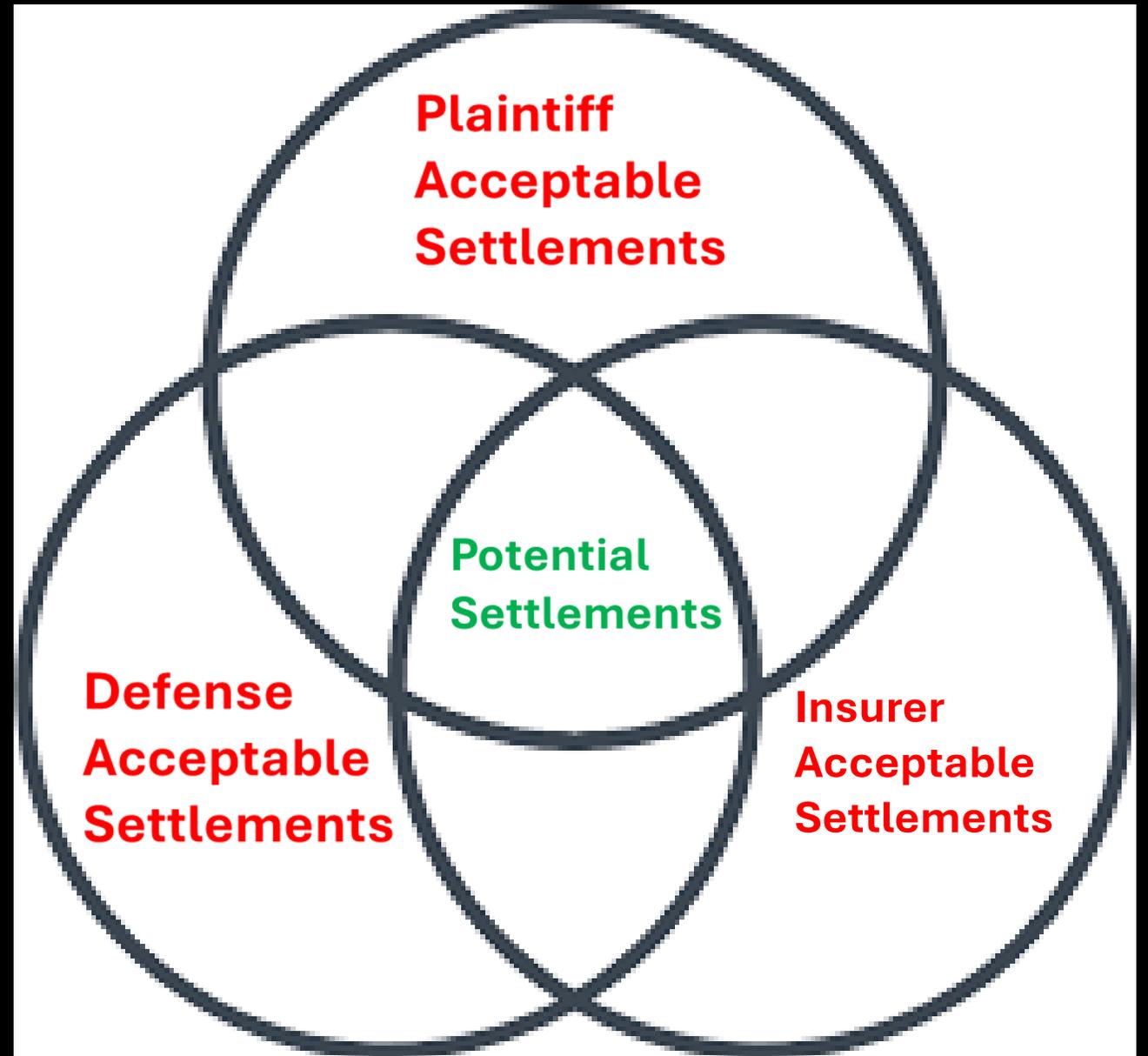
Types of Mediations

- “One off” - P vs. D
- Group mediation- a finite, but manageable number of plaintiffs with a controllable number of variables
- Mass Tort Mediation- a largely unknown and unlitigated large number of claims, multiple potential actors, multiple payors, etc.

Typical “One Off” Mediation



Multidefendant/ Insurer Mediations



When to Mediate?

When as many meaningful variables as possible have been eliminated and the parties are motivated to settle the case.

When to Mediate?

When as many meaningful variables as possible have been eliminated and the parties are motivated to settle the case.

Survivor Attending Mediation?

Reasons Plaintiff Wants Them There

- Client makes a good impression
- Shows defense they are prepared to move forward

Reasons Defense Wants Them There

- Assumption that Plaintiff's lawyer doesn't convey offers
- Makes it seem real

Survivor Attending Mediation?

Reasons Plaintiff DOES NOT Want Them There

- Client is unpredictable
- Client will not hold up well at drudgery of mediation
- Mediator will get between lawyer and client

Reasons Defense DOES NOT Want Them There

- Retraumatized survivor
- Empowered them
- Offended them

Presentations at Mediation

Speeches can backfire. . .

Who are you presenting for?

Presentations at Mediation



Confidentiality?

- Plaintiffs should make it clear at the beginning of the mediation
- Defense might choose to wait to ask for confidentiality



CAN YOU
KEEP A
SECRET?

Clergy Abuse Litigation

- Is clergy abuse litigation different?
- Current state of clergy abuse litigation?

Is Clergy Abuse Litigation Different?

- Limited data on whether victims of clergy abuse suffer differently than those of other forms of CSA.
 - “Unique betrayal”
 - Spiritual harm
 - Longer time to report / community ostracization
 - Common age and gender relationship

Is Clergy Abuse Litigation Different?

Factors that affect clergy abuse claims

- Historic organizational cover-ups
- Family/community relationships
- Publicity of Catholic clergy abuse
- Hypocrisy

Current Clergy Abuse Litigation

Bankruptcy

2004-2019

18 dioceses went through and emerged from bankruptcy.

2020-Present

17 dioceses are currently in bankruptcy proceedings (six in NY, one in NJ, and one in CT, six in CA)

Current Clergy Abuse Litigation

Bankruptcy

- Transforms clergy abuse litigation into a mass tort
- Provides a substantial delay in litigation
- Offered an opportunity to cap and resolve claims

OR SO WE THOUGHT . . .

Current Clergy Abuse Litigation

- *Harrington v. Purdue Pharma L.P.*, 603 U.S. ____ (2024)

Nonconsensual releases of nondebtors were not permitted as part of a Chapter 11 plan

Current Clergy Abuse Litigation

Pending window state cases

Cases within current SOLs