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HOUSE COMMITTEE REPORT

f/20
Rules

(7)
Date Referred: March 23, 1989
Date of Committee Action: 4/19/89
The JUDICIARY Committee considered:

FURTHER REFERRALS:

HB 238

HOUSE BILL NO. 238 [SEXUAL ABUSE OF MINORS/CIVIL ACTIONS]
"An Act extending to three years the statute of limitations for civil actions brought by victims of sexual abuse, and relating to causes of action brought by adult victims based on injury suffered as a result of sexual abuse during childhood and the statute of limitations applicable to those causes of action; and providing for an effective date."

RECOMMENDATIONS:
 be replaced with CSHB 238 (JUD) [] the same title
[] have attached amendment(s) [X] a new title
[] do pass
[] do not pass
 no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent
ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)
[] fiscal impact _____ [] fiscal note(s) _____
[] zero fiscal note _____ [] zero fiscal note(s) _____
[] zero with analysis Law [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

Signature	Name	Do Not Pass	No Rec	Amend
<u>[Signature]</u>	MARTIN		<input checked="" type="checkbox"/>	
<u>[Signature]</u>	ELLIS		<input checked="" type="checkbox"/>	
<u>[Signature]</u>	M. DAVIS		<input checked="" type="checkbox"/>	
<u>[Signature]</u>	GOLL		<input checked="" type="checkbox"/>	

[Signature]
CO Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An act eliminating age limits</u>	BRU:	<u>Trial Courts</u>
		<u>... in crimes of sexual assault ...</u>
Sponsor: <u>Ulmer, Goll & Collins</u>	Components:	
Requestor:		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds						
Federal Funds						
Other						
TOTAL						

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 10/02/89
 Date: 10/02/89

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

Original sponsors: Ulmer, Goll,
and Collins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 238 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act eliminating the age limitations in the defi-
7 nitions of crimes of sexual assault and the dis-
8 tinctions between types of first degree sexual as-
9 sult in certain criminal statutes; relating to
10 causes of action brought by adult victims based on
11 injury suffered as a result of sexual abuse during
12 childhood and to the statute of limitations applica-
13 ble to those causes of action; extending the period
14 in which civil actions are tolled for persons with
15 mental disabilities, and extending to three years the
16 statute of limitations for civil actions brought by
17 victims of sexual abuse; and providing for an effec-
18 tive date."

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

20 * Section 1. AS 09.10.060 is amended by adding a new subsection to
21 read:

22 (c) A person who was the victim of sexual abuse may not maintain
23 an action for recovery of damages against the perpetrator of the act
24 or acts of sexual abuse based on the perpetrator's intentional conduct
25 for an injury or condition suffered as a result of the sexual abuse
26 unless commenced within three years. In this subsection, "sexual
27 abuse" means an act committed by the defendant against the plaintiff
28 maintaining the cause of action if the defendant's conduct would have
29 violated the provisions of AS 11.41.410 - 11.41.440 or 11.41.450 -

1 11.41.455 at the time it was committed.

2 * Sec. 2. AS 09.10.140 is amended to read:

3 Sec. 09.10.140. DISABILITIES OF MINORITY AND INCOMPETENCY. If a
4 person entitled to bring an action mentioned in this chapter is at the
5 time the cause of action accrues either (1) under the age of majority,
6 or (2) incompetent by reason of mental illness or mental disability,
7 the time of a [THE] disability identified in (1) or (2) of this sec-
8 tion is not a part of the time limit [LIMITED] for the commencement of
9 the action. Except as provided in (b) of this section, the [THE]
10 period within which the action may be brought is not extended in any
11 case longer than two years after the disability ceases.

12 * Sec. 3. AS 09.10.140 is amended by adding a new subsection to read:

13 (b) An action based on a claim of sexual abuse under AS 09.55.-
14 650 may be brought more than three years after the plaintiff reaches
15 the age of majority if it is brought under the following circumstan-
16 ces:

17 (1) if the claim asserts that the defendant committed one
18 act of sexual abuse on the plaintiff, the plaintiff shall commence the
19 action within three years after the plaintiff discovered or through
20 use of reasonable diligence should have discovered that the act caused
21 the injury or condition;

22 (2) if the claim asserts that the defendant committed more
23 than one act of sexual abuse on the plaintiff, the plaintiff shall
24 commence the action within three years after the plaintiff discovered
25 or through use of reasonable diligence should have discovered the
26 effect of the injury or condition attributable to the series of acts;
27 a claim based on an assertion of more than one act of sexual abuse is
28 not limited to plaintiff's first discovery of the relationship between
29 any one of those acts and the injury or condition, but may be based on

1 plaintiff's discovery or constructive knowledge of the effect of the
2 series of acts.

3 * Sec. 4. AS 09.55 is amended by adding a new section to read:

4 ARTICLE 8. ACTIONS BY A VICTIM BASED ON
5 SEXUAL ABUSE AS A MINOR.

6 Sec. 09.55.650. CLAIM BASED ON SEXUAL ABUSE AS A MINOR. (a) A
7 person who, as a minor, was the victim of sexual abuse may maintain an
8 action for recovery of damages against the perpetrator of the act or
9 acts of sexual abuse based on the perpetrator's intentional conduct
10 for an injury or condition suffered as a result of the sexual abuse.

11 (b) If the defendant committed more than one act of sexual abuse
12 on the plaintiff, the plaintiff is not required to prove which specif-
13 ic act caused the injury.

14 (c) In this section,

15 (1) "minor" means a person under 16 years of age;

16 (2) "sexual abuse" means an act committed by the defendant
17 against the plaintiff maintaining the cause of action if the defen-
18 dant's conduct would have violated the provisions of AS 11.41.410 -
19 11.41.440 or 11.41.450 - 11.41.455, former AS 11.15.120, 11.15.134, or
20 11.15.160, or former AS 11.40.110 at the time it was committed.

21 * Sec. 5. AS 11.41.110(a) is amended to read:

22 (a) A person commits the crime of murder in the second degree if

23 (1) with intent to cause serious physical injury to another
24 person or knowing that the conduct is substantially certain to cause
25 death or serious physical injury to another person, the person causes
26 the death of any person;

27 (2) the person knowingly engages in conduct that results in
28 the death of another person under circumstances manifesting an extreme
29 indifference to the value of human life; or

1 (3) acting either alone or with one or more persons, the
2 person commits or attempts to commit arson in the first degree, kid-
3 napping, sexual assault in the first degree [UNDER AS 11.41.410(a)(1)
4 OR (2)], sexual assault in the second degree, burglary in the first
5 degree, escape in the first or second degree, or robbery in any degree
6 and, in the course of or in furtherance of that crime, or in immediate
7 flight from that crime, any person causes the death of a person other
8 than one of the participants.

9 * Sec. 6. AS 11.41.300(d) is amended to read:

10 (d) In a prosecution for kidnapping, it is an affirmative de-
11 fense which reduces the crime to a class A felony that the defendant
12 voluntarily caused the release of the victim alive in a safe place
13 before arrest, or within 24 hours after arrest, without having caused
14 serious physical injury to the victim and without having engaged in
15 conduct described in AS 11.41.410(a) [AS 11.41.410(a)(1) OR (2)] or
16 11.41.420.

17 * Sec. 7. AS 11.41.410(a) is amended to read:

18 (a) A person commits the crime of sexual assault in the first
19 degree if [,]

20 (1) [BEING ANY AGE,] the defendant engages in sexual pene-
21 tration with another person without consent of that person;

22 (2) [BEING ANY AGE,] the defendant attempts to engage in
23 sexual penetration with another person without consent of that person
24 and causes serious physical injury to that person; or

25 (3) [BEING OVER THE AGE OF 18,] the defendant engages in
26 sexual penetration with another person

27 (A) who the defendant knows is mentally incapable; and

28 (B) who is entrusted to the defendant's care

29 (i) by authority of law; or

1 (ii) in a facility or program that is required by
2 law to be licensed by the Department of Health and Social
3 Services.

4 * Sec. 3. AS 11.41.420(a) is amended to read:

5 (a) An offender commits the crime of sexual assault in the
6 second degree if

7 (1) the offender engages in sexual contact with another
8 person without consent of that person;

9 (2) [BEING OVER THE AGE OF 18,] the offender engages in
10 sexual contact with a person

11 (A) who the offender knows is mentally incapable; and

12 (B) who is entrusted to the offender's care

13 (i) by authority of law; or

14 (ii) in a facility or program that is required by
15 law to be licensed by the Department of Health and Social
16 Services; or

17 (3) [BEING OVER THE AGE OF 18,] the offender engages in
18 sexual penetration with a person who the offender knows is

19 (A) mentally incapable; or

20 (B) incapacitated.

21 * Sec. 9. AS 11.41.425(a) is amended to read:

22 (a) An offender commits the crime of sexual assault in the third
23 degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual
24 contact with a person who the offender knows is

25 (1) mentally incapable; or

26 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
27 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
28 UNWILLINGNESS TO ACT].

29 * Sec. 10. AS 11.81.335(a) is amended to read:

1 (a) Except as provided in (b) of this section, a person may use
2 deadly force upon another person when and to the extent

3 (1) the use of nondeadly force is justified under AS 11.81.-
4 330; and

5 (2) the person reasonably believes the use of deadly force
6 is necessary for self defense against death, serious physical injury,
7 kidnapping, sexual assault in the first degree [UNDER AS 11.41.-
8 410(a)(1) or (2)], sexual assault in the second degree, or robbery in
9 any degree.

10 * Sec. 11. APPLICABILITY. Sections 2 - 4 of this Act apply to all
11 actions commenced on or after the effective date of this Act, regardless of
12 when the cause of action may have arisen.

13 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 121 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to crimes of sexual assault on
7 mentally incapable or incapacitated persons; amending
8 references to the crime of sexual assault in the
9 first degree as it relates to the crimes of second
10 degree murder and kidnapping, and to the use of force
11 in self-defense; and providing for an effective
12 date."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 11.41.110(a) is amended to read:

15 (a) A person commits the crime of murder in the second degree if

16 (1) with intent to cause serious physical injury to another
17 person or knowing that the conduct is substantially certain to cause
18 death or serious physical injury to another person, the person causes
19 the death of any person;

20 (2) the person knowingly engages in conduct that results in
21 the death of another person under circumstances manifesting an extreme
22 indifference to the value of human life; or

23 (3) acting either alone or with one or more persons, the
24 person commits or attempts to commit arson in the first degree, kid-
25 napping, sexual assault in the first degree [UNDER AS 11.41.410(a)(1)
26 OR (2)], sexual assault in the second degree, burglary in the first
27 degree, escape in the first or second degree, or robbery in any degree
28 and, in the course of or in furtherance of that crime, or in immediate
29 flight from that crime, any person causes the death of a person other

1 than one of the participants.

2 * Sec. 2. AS 11.41.300(d) is amended to read:

3 (d) In a prosecution for kidnapping, it is an affirmative de-
4 fense which reduces the crime to a class A felony that the defendant
5 voluntarily caused the release of the victim alive in a safe place
6 before arrest, or within 24 hours after arrest, without having caused
7 serious physical injury to the victim and without having engaged in
8 conduct described in AS 11.41.410(a) [AS 11.41.410(a)(1) OR (2)] or
9 11.41.420.

10 * Sec. 3. AS 11.41.410(a) is amended to read:

11 (a) A person commits the crime of sexual assault in the first
12 degree if, being any age,

13 (1) [BEING ANY AGE,] the defendant engages in sexual pene-
14 tration with another person without consent of that person;

15 (2) [BEING ANY AGE,] the defendant attempts to engage in
16 sexual penetration with another person without consent of that person
17 and causes serious physical injury to that person;

18 (3) [BEING OVER THE AGE OF 18,] the defendant engages in
19 sexual penetration with another person

20 (A) who the defendant knows is mentally incapable; and

21 (B) who is entrusted to the defendant's care

22 (i) by authority of law; or

23 (ii) in a facility or program that is required by
24 law to be licensed by the Department of Health and Social
25 Services.

26 * Sec. 4. AS 11.41.420(a) is amended to read:

27 (a) An offender commits the crime of sexual assault in the
28 second degree if

29 (1) the offender engages in sexual contact with another

1 person without consent of that person;

2 (2) [BEING OVER THE AGE OF 18,] the offender engages in
3 sexual contact with a person

4 (A) who the offender knows is mentally incapable; and

5 (B) who is entrusted to the offender's care

6 (i) by authority of law; or

7 (ii) in a facility or program that is required by
8 law to be licensed by the Department of Health and Social
9 Services; or

10 (3) [BEING OVER THE AGE OF 18,] the offender engages in
11 sexual penetration with a person who the offender knows is

12 (A) mentally incapable; or

13 (B) incapacitated.

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15 (a) An offender commits the crime of sexual assault in the third
16 degree if [BEING OVER THE AGE OF 18,] the offender engages in sexual
17 contact with a person who the offender knows is

18 (1) mentally incapable; or

19 (2) incapacitated [TEMPORARILY INCAPABLE OF APPRAISING THE
20 NATURE OF THE PERSON'S CONDUCT AND IS PHYSICALLY UNABLE TO EXPRESS
21 UNWILLINGNESS TO ACT].

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24 deadly force upon another person when and to the extent

25 (1) the use of nondeadly force is justified under AS 11.81.-
26 330; and

27 (2) the person reasonably believes the use of deadly force
28 is necessary for self defense against death, serious physical injury,
29 kidnapping, sexual assault in the first degree (UNDER

1 AS 11.41.410(a)(1) or (2)], sexual assault in the second degree, or
2 robbery in any degree.

3 * Sec. 7. This Act takes effect immediately under AS 01.10.070(c).
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BILL NO: HB 238

DATE: April 4, 1989

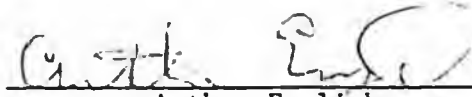
TITLE: An Act extending the
statute of limitations for
civil actions brought by
victims of sexual abuse

CONTACT: Barbara Miklos
Executive Director
Council on Domestic
Violence & Sexual
Assault

DEPARTMENT OF
PUBLIC SAFETY

The Council on Domestic Violence and Sexual Assault supports HB 238, which extends the statute of limitations for civil actions brought by victims of sexual abuse. Victims of sexual abuse undergo such trauma, shame and feelings of helplessness as a result of the abuse, that it is common for them to be unable to deal with the reality of the assault and its effects on them until some time has passed. Thus, extending the statute of limitations for these crimes is very appropriate.

For victims of child sexual abuse, the trauma is compounded by the fact that children are so powerless and helpless. For children, there is usually fear and secrecy associated with the abuse; and, psychologically, the only way a child can deal with the enormity of the violation is to deny to themselves that it happened. For many victims of child sexual abuse, it is not until years later that they are able to come to terms with the fact that the abuse occurred. It is often only after having difficulties in other aspects of their lives and entering into counseling, that they are able to confront the underlying problem, which is the abuse that was inflicted on them as children. We believe that extending the statute of limitations for these crimes is important.



Arthur English
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act extending the statute of limitations for civil actions ..."
Sponsor: Ulmer, Goll, Collins
Requestor: _____

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

FULL-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
PART-TIME	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
TEMPORARY	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

ANALYSIS: (Attach a separate page if necessary)

The bill would apply to civil actions between two private parties. It would have no effect on the Department of Public Safety.

Prepared by: Barbara Miklos, Executive Director *BPM*
Division: Council on Domestic Violence and Sexual Assault

Phone: 465-4356

Date: 4/6/89

Approved by Commissioner: Arthur English *AE*
Agency: Department of Public Safety

Date: 4/6/89

Alaska State Legislature

Representative Fran Ulmer



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

March 27, 1989

TO: Rep. Peter Goll, Co-Chair
Rep. Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 238, extending the statute of limitations for civil actions brought by victims of sexual abuse and relating to causes of action brought by adult victims of childhood sexual abuse

I would like to request a hearing for House Bill 238 which extends the statute of limitations for civil actions brought by victims of sexual abuse and relates to causes of action brought by adult victims based on injury suffered as a result of childhood sexual abuse. I believe this is an innovative bill which will effectively serve the interests of the victims of childhood sexual abuse. I would appreciate your scheduling a hearing at your earliest convenience.

Thank you for your attention to this bill.

FU/dl

Q w/ HB 238 in Jul 1989.

MEMORANDUM

State of Alaska



TO: Co-chairs Gruenberg & Goll
and Members of the House
Judiciary Committee

DATE: March 31, 1989

FILE NO:

TELEPHONE NO: 274-1684

THRU: Hayden Kayden

SUBJECT:

FROM:

Erant McGee *ESM*
Public Advocate
Office of Public Advocacy

The Office of Public Advocacy supports the clarification of current law and the extension of the statute of limitations contained in "HB 238." As guardians ad litem for thousands of abused children every year, we are pleased at this legislative effort to expand these victims' right to seek redress.

Unfortunately, the OPA staff does not have sufficient technical expertise in tort law to comment on most provisions of the bill. However, we would suggest that the committee consider the addition of the words "or disability" at line 29, page 1, in order to broaden the class of victims to include the developmentally disabled.

If the bill passes we hope that the Committee and the bill's sponsors will make a strong effort to assure the widest possible public dissemination of its provisions in order to inform former victims of this enhanced legal remedy.

mw

ALASKA NETWORK
ON

DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 301 • Juneau, Alaska 99801 • (907) 586-3650

Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Maniilaq Regional Women's Crisis Program; MEN, Inc.;
Safe & Fear-Free Environment (SAFE); Sitkas Against Family Violence (SAFV);
Southwestern Alaska Council for the
Prevention of Child Sexual Assault (SWAC/PCSA);
South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR); Tundra Women's Coalition (TWC);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WICCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

H' 238

THE ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT SUPPORTS HOUSE BILL 238, WHICH ALLOWS SURVIVORS OF CHILD SEXUAL ABUSE TO BRING CIVIL SUIT AGAINST THE PERPETRATOR.

IT IS NOT UNCOMMON FOR VICTIMS OF CHILD SEXUAL ABUSE TO REPRESS MEMORIES OF THE ABUSE. IN A CLINICAL STUDY CONDUCTED RECENTLY IN MASSACHUSETTS, 64% OF THE PATIENTS DID NOT HAVE FULL RECALL OF THEIR SEXUAL ABUSE AND 28% REPORTED SEVERE MEMORY REPRESSION. IT IS IMPORTANT TO NOTE, HOWEVER, THAT IN THE SAME STUDY MOST PATIENTS WHO RECOVERED MEMORIES WERE ABLE TO VERIFY THOSE MEMORIES THROUGH THE RECOLLECTIONS OF FAMILY MEMBERS, DIARIES, OR OTHER MEANS OF VERIFICATION.

BY CHANGING THE STATUTE OF LIMITATIONS THE LEGISLATURE WILL BE HELPING TO INCREASE THE CHANCES THAT ABUSERS WILL HAVE TO PAY FOR THE DAMAGE CAUSED TO THEIR FORMER VICTIM. THIS DAMAGE IS USUALLY EXTENSIVE. A CANADIAN RESEARCH TEAM FOUND THAT 92.9% OF CHILDREN IN THEIR STUDY WHO ATTEMPTED SUICIDE BEFORE THE AGE OF THIRTEEN WERE VICTIMS OF CHILD SEXUAL ABUSE. PROBLEMS FOR VICTIMS CAN CONTINUE THROUGHOUT THEIR LIVES AND REQUIRE MEDICAL AND PSYCHOLOGICAL TREATMENT. THAT COST SHOULD BE PAID BY THE ABUSER, NOT THE VICTIM.

Testimony re HB 238, relating to legal rights for survivors of childhood sexual abuse.

Submitted by: Elaine Schroeder, Ph.D.
1706 Willow
Juneau, Alaska
586-6879

I am here to support House Bill 238 which would allow survivors of childhood sexual abuse a more appropriate amount of time to seek legal redress. The very nature of the impact of child sexual abuse means that most victims have neither full recall of the abusive events nor fully understand that the painful symptoms they experience are caused by the earlier abuse.

I am particularly interested in this issue because I have worked as a psychotherapist and as a researcher with hundreds of adult and child survivors of childhood sexual abuse.

Let me introduce myself. I am a psychotherapist in private practice; my specialty is working with the victims of sexual abuse, and their families. I have performed substantial research on the subject of high-risk adolescent girls, 80% of whom have a history of sexual abuse.

My testimony will address three issues: (1) how total or partial repression (or amnesia) of painful memories of childhood sexual abuse occurs; (2) how survivors usually do not fully understand until later the relationship between the sexual abuse they experienced as a child and the psychological problems they experience as adults; (3) support for the one year extension of the statute of limitations.

REPRESSION: It has long been understood that people repress painful and traumatic memories. When we cannot cope with events or experiences which are exceedingly painful or unacceptable, we may "forget" them as a way to cope with an unbearable experience. Children and adult victims of war atrocities and natural disasters are known to experience amnesia about these events. The standard mental health diagnosis, as defined by the DSM III (the diagnostic system for all mental health clinicians) for people who have suffered childhood sexual abuse is called "Post Traumatic Stress Disorder." The definition of this diagnosis includes the following:

"the development of characteristic symptoms following a psychologically distressing event that is outside the range of usual human experience. . . The stressor producing this syndrome would be markedly distressing to almost anyone and is usually experienced with intense fear, terror and helplessness. . . The person commonly

Testimony of Elaine Schroeder, Ph.D.

makes deliberate efforts to avoid thoughts or feelings about the traumatic event and about activities or situations that arouse recollections of it. This avoidance of reminders of the trauma may include psychogenic amnesia of an important aspect of the traumatic event."

Many of my clients, while they may remember some of the abusive events, have avoided talking or consciously thinking about them for years. When in therapy, they often begin to recall more memories of the abuse as they look back on their childhood. In fact, I have had clients enter therapy because they say a TV program about incest had triggered a flood of memories. The DSM III I quoted earlier states:

"symptoms characteristic of post-traumatic stress syndrome . . . are often intensified or precipitated when the person is exposed to activities that resemble or symbolize the original trauma. . ."

UNDERSTANDING: My second point concerns survivors' ability to connect the childhood trauma with the adult symptoms. Survivors often try to minimize the impact of the abuse so that they do not upset the family system. If a survivor fully acknowledges the impact of the abuse on her life, she will be flooded with feelings of anger towards the abuser, often her father or a relative. Frequently, survivors enter therapy stating that their problem is depression or anxiety, or an eating disorder, or suicidal thoughts. If they do remember the abuse, they may be reluctant to bring it up in therapy because they do not want to stir up painful memories, or because they are ashamed, or because they blame themselves. Two of the therapeutic tasks in working with incest survivors is to help them recall the memories and to understand the impact the sexual abuse has had on their lives. So, only after an adult survivor has entered therapy (which is usually past the age of 30) can she or he have any meaningful understanding of their injuries.

Some of the abuse-related injuries are visible only during adulthood. Again quoting the DMS III: "symptoms may develop after a latency period of months or years following the trauma." So the survivor may not experience some of the harm until years after the trauma. "Discovery" or recall of childhood sexual abuse may occur well into adulthood. And understanding of harm or injury may occur even later. A victim cannot bring a suit until this time.

STATUTE OF LIMITATIONS: My final point relates to extending the statute of limitations one additional year to allow more time for the survivor to heal or to recover from the abuse before he/she seeks legal remedy. Several years in therapy may be necessary before a survivor has the necessary stamina and emotional stability to withstand the stress which a civil suit will create. Though the legal process is stressful, it can also be therapeutic in that it redresses a wrong, is socially supportive of the survivor and, hopefully, will curtail the incidence of this crime.


STATE OF ALASKA
THE LEGISLATURE

HOUSE STATE CAPITE
JUNIAL ALASKA 20811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1989

SUBJECT: Draft CSHB 238 (Judiciary)
TO: Representative Peter Goll, Co-Chair
House Judiciary Committee
FROM: Jack Chenoweth
Legislative Counsel 

The changes you requested are incorporated in the draft that accompanies this memo.

As it has combined House Bills 121 and 238, the committee substitute makes amendments and additions to the civil and criminal law that generally relate to the theme of sexual assault and sexual abuse. It is, I think, arguable that the committee's addition of "mental disability" to the list of disabilities that toll operation of the statute of limitations--the initial amendment made to AS 09.10.140 by bill section 2--falls outside the "single-subject rule" of article II, section 13. The change is perhaps defensible insofar as the bill makes other changes in current limitations statutes, although those changes affect the filing of civil actions based on sexual assault. I note, also, the comment of Assistant Attorney General Bill Mellow to the effect that the addition is probably more technical than substantive insofar as it "[serves] to harmonize legislative intent and judicial construction of the statute." Letter of Assistant Attorney General Bill Mellow of April 18, 1989, to Representative Fran Ulmer, principal sponsor of the legislation.

On page 3, in what is to become AS 09.55.650 proposed by bill section 4, all the places where this version now uses the term "minor" should be revised to read "child." "Minor" should not be used to accomplish different ends. A minor is one who, by general definition, is under 18. The committee now proposes to make that term do something else (i.e. distinguish based on age 16), when what it should do is use a different term, "child," altogether in order to

Representative Peter Goll

Page 2

April 19, 1989

distinguish based on the reference to age 16. In the final, I propose to make the change(s) unless you indicate otherwise.

JBC:kb
wkk4/028

Enclosure

Alaska State Legislature

Representative Fran Ulmer



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

HOUSE OF REPRESENTATIVES

MEMORANDUM

April 3, 1989

TO: Rep. Peter Goll, Co-Chair
Rep. Max Gruenberg, Co-Chair
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 238, relating to adult victims of childhood sexual abuse

.....

The purpose of this bill is to extend the period of time that a victim of child sexual abuse can recover damages for injuries sustained as a result of that abuse. The proposed bill extends the statute of limitations from 2 years to 3 years in cases relating to recovery of damages against the perpetrator of an act(s) of sexual abuse. In addition, this legislation will apply the discovery rule to civil actions based on intentional torts brought by adult survivors of childhood sexual abuse seeking recovery of damages for injuries suffered as a result of that abuse. The discovery rule is a judicially fashioned response to situations in which the traditional statute of limitations, which begins to run as of the date of the wrongful act or omission that is the basis for the plaintiff's claim, is unworkable because injured plaintiffs do not know, or cannot be expected to know, of their injuries until after the limitations period has expired. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers both the injury and its cause.

A survivor of childhood sexual abuse often lacks the means or ability to ascertain his or her injuries and their cause within the traditional limitations period. Many victims of childhood sexual abuse have repressed all memory of the abuse for years or, if they do remember the abuse, they minimize or deny its effects to the extent that they do not connect the abuse with later injuries. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. This legislation will provide childhood sexual abuse survivors with an opportunity to bring civil actions to recover damages for injuries resulting from the abuse.

House Judiciary Committee
April 3, 1989
Page 2

Civil suits provide financial compensation to victims and can help deter unacceptable behavior. No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. The hope is that this legislation, in addition to providing childhood sexual abuse survivors with an opportunity to seek civil redress, will have a chilling effect on potential abusers. Legislative action is essential if the discovery rule is to be applied to childhood sexual abuse cases.

Attached you will find additional material describing the extent and nature of the problems associated with childhood sexual abuse as it pertains to this legislation.

FU/dl

1 IN THE HOUSE

BY ULMER, GOLL AND COLLINS

2

HOUSE BILL NO. 238

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act extending to three years the statute of
7 limitations for civil actions brought by victims of
8 sexual abuse, and relating to causes of action
9 brought by adult victims based on injury suffered as
10 a result of sexual abuse during childhood and the
11 statute of limitations applicable to those causes of
12 action; and providing for an effective date."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 09.10.060 is amended by adding a new subsection to
15 read:

16 (c) A person who was the victim of sexual abuse may not maintain
17 an action for recovery of damages against the perpetrator of the act
18 or acts of sexual abuse based on the perpetrator's intentional conduct
19 for an injury or condition suffered as a result of the sexual abuse
20 unless commenced within three years. In this subsection, "sexual
21 abuse" means an act committed by the defendant against the plaintiff
22 maintaining the cause of action if the defendant's conduct would have
23 violated the provisions of AS 11.41.410 - 11.41.440 or 11.41.450 -
24 11.41.455 at the time it was committed.

25 * Sec. 2. AS 09.10.140 is amended to read:

26 Sec. 09.10.140. DISABILITIES OF MINORITY AND INCOMPETENCY. If a
27 person entitled to bring an action mentioned in this chapter is at the
28 time the cause of action accrues either (1) under the age of majority,
29 or (2) incompetent by reason of mental illness, the time of the

1 disability is not a part of the time limited for the commencement of
2 the action. Except as provided in (b) of this section, the [THE]
3 period within which the action may be brought is not extended in any
4 case longer than two years after the disability ceases.

* Sec. 3. AS 09.10.140 is amended by adding a new subsection to read:

6 (b) An action based on a claim of sexual abuse under AS 09.55.-
7 650 may be brought more than three years after the plaintiff reaches
8 the age of majority if it is brought under the following circum-
9 stances:

10 (1) if the claim asserts that the defendant committed one
11 act of sexual abuse on the plaintiff, the plaintiff shall commence the
12 action within three years after the plaintiff discovered or through
13 use of reasonable diligence should have discovered that the act caused
14 the injury or condition;

15 (2) if the claim asserts that the defendant committed more
16 than one act of sexual abuse on the plaintiff, the plaintiff shall
17 commence the action within three years after the plaintiff discovered
18 or through use of reasonable diligence should have discovered the
19 effect of the injury or condition attributable to the series of acts;
20 a claim based on an assertion of more than one act of sexual abuse is
21 not limited to plaintiff's first discovery of the relationship between
22 any one of those acts and the injury or condition, but may be based on
23 plaintiff's discovery or imputed discovery of the full knowledge of
24 the effect of the series of acts.

25 * Sec. 4. AS 09.55 is amended by adding a new section to read:

26 ARTICLE 8. ACTIONS BY A VICTIM BASED ON
27 SEXUAL ABUSE AS A CHILD.

28 Sec. 09.55.650. CLAIM BASED ON SEXUAL ABUSE AS A CHILD. (a) A
29 person who, as a minor, was the victim of sexual abuse to a minor may

1 maintain an action for recovery of damages against the perpetrator of
2 the act or acts of sexual abuse to a minor based on the perpetrator's
3 intentional conduct for an injury or condition suffered as a result of
4 the sexual abuse.

5 (b) If the defendant committed more than one act of sexual abuse
6 to a minor on the plaintiff, the plaintiff is not required to prove
7 which specific act caused the injury.

8 (c) In this section,

9 (1) "minor" means a person under 18 years of age;

10 (2, "sexual abuse to a minor" means an act committed by the
11 defendant against the plaintiff maintaining the cause of action if the
12 defendant's conduct would have violated the provisions of AS 11.-
13 41.434 - 11.41.440 or 11.41.450 - 11.41.455, former AS 11.15.120,
14 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was
15 committed.

16 * Sec. 5. APPLICABILITY. Sections 2 - 4 of this Act apply to all
17 actions commenced on or after the effective date of this Act, regardless of
18 when the cause of action may have arisen.

19 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

FACT SHEET ON LEGISLATION
APPLYING THE DISCOVERY RULE TO CIVIL SUITS
BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145 (1983). Traditionally, girls were believed to be sexually abused far more often than boys. Recently, it has emerged that boys are abused much more frequently than previously believed. Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 16. M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982).

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. The fact that the abuser is often in a trusting and apparently loving position only increases the child's helplessness and powerlessness. The child faced with continuing abuse somehow must achieve a sense of control. This "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanism that often leads to self-destructive and other destructive behaviors.

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many years. As he or she becomes an adult, a childhood sexual abuse survivor will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their non-victimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward re-victimization, and substance abuse. Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed.

The criminal justice system is largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction remote. Consequently, for many survivors of childhood sexual abuse, civil redress becomes the only available legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutes of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. In instances in which injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers or through the use of reasonable diligence should have discovered the cause of action.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The Washington Supreme Court, in a 5-4 decision, recently held that the discovery rule does not apply to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). Legislative action is therefore imperative.

Application of the discovery rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run until the plaintiff's injuries and the fact that they were caused by the abuse are discovered or should have been discovered by the plaintiff. No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 191, 217-18 (1985). The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

SUMMARY OF TESTIMONY

Shirley Feldman-Summers, Ph.D.

Psychologist

I am here to support a bill which extends the discovery rule cases involving childhood sexual abuse. I take that position to be a substantial number of childhood victims of sexual abuse lose their recollection of what happened until after they reach adulthood. Even when they are able to recall what happened, they are often unable to recognize the link between the abuse that occurred in their childhood and their present problems. The recognition of this link frequently requires professional help. In support of this position, I want to make three points.

First, it has long been understood that people repress painful memories. This is a process that affects us all -- including those of us in this room. When we cannot cope with our emotions and memories because they are too painful, we "forget" -- i.e., we are not consciously aware of them. Repression allows us to cope with the painful experiences. Thus, it is not surprising that a substantial number of people who have been victims of childhood sexual abuse repress those events. Recent empirical evidence published in 1987 suggests that approximately 25% of adult women who were sexually abused as children had repressed the abuse and had no recollection of the molestation. As a result, those 25% are severely hampered by a rule that prevents them from bringing a lawsuit three years after age 18 -- regardless of whether they remember what happened to them or not.

2. My second point is this: Even if a victim remembers some or all of the abuse, we should not assume that she will automatically see the link between abuse that may have occurred 10 or 15 years ago and the psychological problems from which she is suffering today. There are two reasons for saying that. First, we have evidence that some of the problems may not emerge until well into adulthood, e.g., problems with sexual functioning in an adult relationship. Second, it is unrealistic to assume that even when an incest survivor begins to experience those problems as an adult she will recognize the link between her current adult problems and a childhood experience -- especially without professional assistance. It is the discovery of that link which constitutes the heart of most psychotherapy.

3. Finally, it may be tempting to disbelieve the report of someone who at age 28 or 30 or 40 says for the first time that she or he now remembers being abused as a child. It may be tempting to say that such a person will be very unlikely to have any evidence to support that recollection. However, we should resist both of these temptations. Clinical experience and empirical evidence has demonstrated that a substantial number of women, who recall childhood abuse after having repressed it, are in fact able to produce corroborating evidence. In the 1987 publication by Herman and Schatzow that is referred to in the memorandum to support this legislation, the investigators found that approximately three-fourths of the women in their study who had

previously repressed childhood molestation were able to produce at least one item of corroborating evidence by way of diaries, observations or statements by a sibling, admissions by the perpetrator, etc. In short, long term repression should not be seen as suggestive of fabrication or the result of suggestions on the part of other people. Instead, long term repression is simply a survival mechanism employed by many victims as a way to avoid the painfulness of thinking about what they experienced.

Let me conclude with one final remark: If our statute of limitations is not amended to accomodate the process of repression, the person who sets the process in motion -- the abuser -- will benefit. By permitting the victim to sue when he or she discovers the injury and its cause, the chances are increased that abusers will eventually have to pay for the harm that they've caused. If abusers are made to pay -- sooner or later -- for what they've done, perhaps then we will begin to see a decline in the incidence of childhood sexual abuse.

RESUME

SHIRLEY FELDMAN-SUMMERS

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Educational Background

B.A. in Psychology and Philosophy, Mills College, Oakland, California, 1969.

M.A. in Psychology, Connecticut College, New London, Connecticut, 1971.

Ph.D. in Psychology, University of Kansas, Lawrence, Kansas, 1974.

Professional Experience

Faculty member, University of Washington, Seattle, Washington, 1973 to 1983.

Private practice of Psychology, Seattle, Washington, 1976 to present. (License No. 496)

Publications

Articles and essays on social justice; sex role stereotypes; conformity; psychological impacts of rape and childhood molestation; attitudes toward rape and assault victims, and related topics in various books and journals including: Journal of Personality and Social Psychology; Journal of Social Issues; Criminal Justice and Behavior; Journal of Abnormal Psychology; Psychology of Women Quarterly; Journal of Personality; Journal of Educational Psychology; Journal of Applied Psychology; Journal of Applied Social Psychology; Journal of Consulting and Clinical Psychology; Sexual Coercion & Assault. Issues: Psychology and the Problems of Today (M. Wertheimer and L. Rappoport, eds., 1978); Victims and Society (E. Viano, ed., 1979).

Lectures, Workshops and Courses Taught

Psychological aspects of human sexuality; psychological impacts of sexual coercion; social psychology; research methods in social psychology; psychology of women; and related topics.

BACKGROUND INFORMATION
GIVING ADULT VICTIMS OF CHILD SEXUAL ABUSE THEIR DAY IN COURT

Submitted by Peggy Bateman - Alternatives to Fear 1605 17th Ave Seattle WA 98122
Legislative Hearings - 19 January 1988

Senate: 8:00 AM, Hearing Room 6, John A. Cherberg Building
House: 1:30 PM, Hearing Room A, House Office Building

FOR FURTHER INFORMATION CONTACT:

Proposed legislation: Lonnie Johns-Brown, 754-3290, Olympia
Leslie Owen, NW Women's Law Center,
682-9552, Seattle
Jana Mohr, NW Women's Law Center,
682-9552, Seattle

Legal information: Barbara Jo Levy, 622-9050, Seattle

Victim/Survivors: Patti Barton, Legal Rights for Survivors
of Childhood Sexual Abuse, 355-9710,
Everett

LEGAL RIGHTS FOR SURVIVORS
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PRESENT LAW

THE TYSON CASE

The October 30, 1986 decision of the Washington Supreme Court in the case of Tyson v. Tyson placed an insurmountable barrier in the path of adult survivors of child sexual abuse seeking to recover damages from their abusers through our civil court system. In that case, 26 year old Nancy Tyson had brought suit against her father to recover damages for injuries she alleged resulted from sexual abuse that she had not remembered until adulthood. Tyson's attorney Barbara Jo Levy maintained that the statute of limitations on the case should not begin to run until the time of discovery, i.e., Tyson's recovering her memories. Tyson maintained that the abuse she suffered between the ages of three and 11 was blocked from her memory until she began psychotherapy less than a year before she filed suit.

The Supreme Court ruled, in a 5-4 decision, that the "discovery

rule" would not apply in cases of child sexual abuse. Without the application of the "discovery rule," Tyson would have had to file her suit within three years of attaining the age of 18, according to the court decision. That is, she would have had to file by the time she reached 21.

THE RAYMOND CASE

The next year, in May, 1987, the State Court of Appeals cited the Tyson case in ruling that the discovery rule would not apply to the case of Raymond v. Ingram. Pamela Raymond had brought suit against her grandparents, alleging that her grandfather had sexually abused her when she was between the ages of four and 17, and that her grandmother had known of the abuse and neglected to prevent it.

Raymond's memories of the abuse were not blocked, nor were her memories of the stomach cramps, sleep disorder and other problems she suffered. However, she maintained that she did not realize the cause and effect relationship between the abuse and the problems until she entered into psychotherapy. The Court of Appeals supported the trial court in its application of the statute of limitations running from Raymond's age of majority.

Attorneys like Levy report that they continue to receive calls from adult survivors like Tyson and Raymond, but have had to advise them that they have no cause of action, because of the statute of limitations. Under the proposed changes, the statute of limitations would not begin to run until the victim/survivor discovered her injury.

WHAT ARE THE DAMAGES IN CHILD SEXUAL ABUSE?

Individuals vary widely in their response to the trauma of child sexual abuse. However, practitioners and researchers have been able to identify a constellation of initial and long-term effects of sexual abuse in the 12-15 million American women that the American Psychological Association estimates have suffered incestuous abuse, along with the additional millions that were victim to extra-familial sexual abuse.

INITIAL EFFECTS

Experts in the field have noted a number of the following initial effects, many of which will have consequences that are long-term:

- *Sleep and eating disturbances
- *Adolescent pregnancy--in one study 11% of the child victims became pregnant as a result of the sexual offense.
- *Fears and phobias
- *Depression
- *Guilt and shame and related lowered sense of self esteem
- *Anger and hostility resulting in behavioral disturbances within the family and at school.
- *Sexual disturbances, including open masturbation, excessive sexual curiosity, frequent exposure of genitals, and sexual aggression against other children.
- *School problems including truancy and quitting school.
- *Running away

LONG TERM EFFECTS

The long-term effects of child sexual abuse are sometimes merely a continuation of initial effects. However, recent literature has focused on describing effects that manifest themselves long after the abuse in a Post Traumatic Stress Syndrome. In cases which may be

diagnosed as PTSD symptoms may appear years later that the sufferer may not be able to connect to the original stress--sexual abuse--without professional help.

In addition, life experiences such as marriage, having children, experiencing an adult rape or rape attempt, being close to someone who suffers an adult rape or rape attempt, can bring forth symptoms that can be confusing or terrifying to a victim who thought she had put it all behind her, or one who does not remember her abuse. Some of the effects that may persist into or suddenly appear in adulthood include:

- *Depression, including that severe enough to require hospitalization.

- *Suicide attempts--A Canadian research team found that 92.9% of mental health center patients who had attempted suicide before the age of 13 were victims of child sexual abuse, as were 87.2% of those whose first attempt occurred in adolescence.

- *Nervousness and anxiety, sometimes resulting in sleep disturbance, nightmares, extreme tension and other somatic complaints.

- *Eating disorders, including anorexia and bulimia.

- *Poor self esteem--In a 1985 study women with poor self esteem were four times as likely to report a history of child sexual abuse as were other subjects.

- *Difficulties in interpersonal relations including feelings of isolation, difficulty trusting others, difficulties in parenting including abuse of their own children.

- *Vulnerability to revictimization--one study reported that former incest victims were twice as likely to be victims of rape than were those who had not been victimized in childhood. Other studies report a correlation between childhood sexual abuse and being battered in adult relationships.

- *Sexual problems ranging from an inability to relax and enjoy sex to a compulsive desire for sex, "promiscuity," and prostitution.

WHY SHOULD THE DISCOVERY RULE BE APPLIED?

There are a number of reasons that a young adult aged 18-21 may not know of the damage done by child sexual abuse. Social scientists estimate that the average age of a victim of child sexual abuse is eight years, with a reported range from birth to age 16. 50-90% of this abuse goes unreported, although reporting rates have improved recently with the introduction of education in the public schools and attention by the mass media.

Even now, though, it is very difficult for a child to report sexual abuse because of threats by the abuser of physical violence, harm to the victim's siblings or mother, threat of abandonment or separation, and other psychologically coercive tactics. In addition, many children are simply too young to be able to communicate effectively about their abuse.

Many children who do report are met with denial on the part of the adult they tell, and more frequently by the adult accused. When a child does tell about abuse and is met with denial or accusation rather than care and protection, that child, as well as the child that cannot tell, must find some way of coping with the trauma, which is often continuing.

REPRESSION OF MEMORIES

One very common way of coping--particularly effective with very young children--is to forget all or part of the abuse. In a clinical study conducted recently in Massachusetts, 64% of the patients did not have full recall of their sexual abuse, while 28% reported severe memory repression. For those suffering only partial memory loss, the amnesia is likely to cover the most severe aspects of the abuse. In

the Massachusetts study, most of the patients who recovered memories in the course of treatment were able to go back and verify those memories through the recollections of other family members and other means of verification. One woman found a detailed diary of her abuse kept by her abuser.

THE ACCOMMODATION SYNDROME

Another childhood coping response is to deny the injury caused by the abuse. Psychologist Roland Summit has described an "accommodation syndrome," in which the shame, self-blame, and secrecy associated with the abuse inhibit the victim's understanding of its effects. In this process the child assumes responsibility for the abuse and internalizes her feelings of rage and anxiety, denying the injury.

Since these and other common victim coping responses are likely to mask the effects of child sexual abuse until the victim undergoes treatment by a psychotherapist, the application of the "discovery rule" would enable them to recover damages for their injuries.

THE DISCOVERY RULE

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. The courts have fashioned the "delayed discovery" exception which provides that the statute of limitations does not begin to run until the plaintiff should have discovered or through the use of reasonable diligence should have discovered the cause of action.

The Surgeon General's Northwest Regional Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases in its meeting in

Seattle in September 1987. And Justice Goodloe, concurring in the Tyson decision, wrote: "I believe the arguments of the dissent are most compelling; however, the end result appears to be subjective judicial policy making. This is the exclusive province of the Legislature, and the judiciary must not invade it." [Tyson vs. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986)].

Supporters of these bills ask our legislators to take Justice Goodloe's remarks as a directive and provide for the adult victim/survivors of child sexual abuse an opportunity to take their cases to court and let a jury decide the truth of their claims and the cause and extent of the damage they have suffered.

Application of the "discovery rule" will not only give victims a chance for a hearing, but may also have a chilling effect on the abuser who must then recognize that while he may be able to control a child and keep her from telling, he may have to face the consequences of his actions later when she grows up. It is ironic that it is the effects of his wrongdoing--the trauma caused by the abuse, the repression, the accommodation--that results in his victim's inability to pursue redress through the courts. The "discovery rule" can help to strip away this unfair protection for the abuser and force him to face his accuser when she is an adult and able to stand up for herself.

Prepared by Jana Mohr, Attorney at Law
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MEMORANDUM IN SUPPORT OF LEGISLATION
APPLYING THE DISCOVERY RULE TO CIVIL SUITS
BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

I. Purpose of the Legislation

The discovery rule, which states that a statute of limitation does not begin to run until a plaintiff discovers or through the use of reasonable diligence should have discovered that she or he is injured and that the injury was caused by the defendant's misconduct, should be applied to civil suits based on intentional torts brought by adult survivors of childhood sexual abuse.¹

II. Facts

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. Brozan, Helping to Heal the Scars Left by Incest, NY Times, Jan. 9, 1984, at B2, col. 6. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145 (1983). There is virtually unanimous agreement that sexual abuse is the fastest growing form of reported child abuse. K. MacFarlane & J. Waterman, Sexual Abuse of Young Children 5 (1986). The vast majority of investigated reports prove valid. R. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177, 178 (1983).

Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 16. M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982). The duration of the abuse, however, may cause age estimations to be artificially high because the age listed as the age of abuse is almost always the victim's age at the time a report is made,

¹Childhood sexual abuse is defined for the purpose of this memorandum as any kind of exploitative sexual contact with persons related or unrelated by blood or marriage before the victim turned 16.

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and sexual abuse often begins long before it is reported. See K. MacFarlane & J. Waterman, supra at 7. Many experts believe that most child victims of sexual abuse were less than 8 years old at the time of initiation. See, e.g., R. Summit, supra at 178.

The abusers are usually family members, friends, and neighbors, and they are predominantly male. D. Finkelhor, Sexually Victimized Children 73-75 (1979). Traditionally, girls were believed to be sexually abused far more often than boys. S. Butler, Conspiracy of Silence: The Trauma of Incest 5 (1978) (citing V. DeFrancis, Protecting the Child Victim of Sex Crimes Committed by Adults 56, 66 (1969) (study concluding that 97% of offenders are adult males and 87% of child victims are females)). Recently, it has emerged that boys are abused much more frequently than previously believed. Surveys of child molesters (who are predominantly male) have demonstrated that as many as 85% of them were themselves abused as children. K. MacFarlane & J. Waterman, supra at 9-10.

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. S. Butler, supra at 12-13. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. R. Summit, supra at 181. Physical violence and/or the threat of physical violence, threats of harm to the victim's siblings or mother, the threat of abandonment or separation, and other psychologically coercive tactics used by the abuser result in the child becoming virtually incapable of disclosing the abuse. M. de Young, The Sexual Victimization of Children 41 (1982). Moreover, many of the victims are simply too young to be able to communicate effectively the abuse, or may be unaware that the behavior is anything unusual or inappropriate. K. MacFarlane & J. Waterman, supra at 5-7. In any event, children who do break this silence are rarely believed. M. Kirkpatrick, supra at 128-29.

The adult expectation that victims of abuse will exercise self-protection and immediately disclose the abuse ignores the inherent authority of the adult and the corresponding helplessness of the child. R. Summit, supra at 182-84. The fact that the abuser is often in a trusting and apparently loving position only increases the child's helplessness and powerlessness.²

²The normal reaction of child victims is "to 'play possum,' that is to feign sleep, to shift position, and to pull up the covers. Small creatures simply do not call on force to deal with overwhelming threat. Where there is no place to run, they have no choice but to try to hide." R. Summit, supra at 183.

"Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence." Id. at 183.

If the child does not seek or receive immediate intervention and protection, the child's only option becomes accommodating to the reality of continuing sexual abuse. The child faced with continuing abuse somehow must achieve a sense of control. He or she cannot safely conceptualize a parent as bad because to do so is tantamount to abandonment.³ Thus, the only acceptable option for the child becomes assumption of responsibility for the abuse. R. Summit, supra at 184-86. This "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanism that often leads to self-destructive and other destructive behaviors. Id. For example, a study of 195 female clients of a community mental health center found that 54.9% of the survivors of childhood sexual abuse reported previous suicide attempts, as opposed to 22.6% of nonvictims. The study further found that 92.9% of the women whose first suicide attempt occurred before age 13 were victims of childhood sexual abuse, and 87.2% of those whose first attempt was during adolescence were childhood sexual abuse victims. J. Briere & M. Runtz, Suicidal Thoughts and Behaviors in Former Sexual Abuse Victims, 18 Can. J. Behavioral Sci. 413 (1986).

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many

³This process is described as a "vertical split in reality testing:"

If the very parent who abuses and is experienced as bad must be turned to for relief of the distress that the parent has caused, then the child must, out of desperate need, register the parent--delusionally--as good. Only the mental image of a good parent can help the child deal with the terrifying intensity of fear and rage which is the effect of the tormenting experiences. The alternative--the maintenance of the overwhelming stimulation and the bad parental image--means annihilation of identity, of the feeling of the self. So the bad has to be registered as the good. This is a mind-splitting or mind-fragmenting operation. R. Summit, supra at 184 (quoting Shengold, Child Abuse and Deprivation: Soul Murder, 27 J. Am. Psychoanalytic Ass'n 539 (1979) (emphasis in original)).

years. E.S. Blume, The Walking Wounded: Post-Incest Syndrome, 15 SIECUS Report 5 (1986).

Many, if not most, survivors of child sexual abuse develop amnesia so complete that they simply do not remember that they were abused at all; or, if they do remember, they minimize or deny the effects of the abuse so completely that that cannot associate it with any later consequences. They are the "walking wounded," functional adults who bear, often secretly, lifelong pain and impaired emotional functioning.

Id. (emphasis in original). One study of 53 female outpatients participating in therapy groups for incest survivors determined that 64% of the patients studied did not have full recall of the sexual abuse but reported some degree of amnesia, and 28% of the women reported severe repression. J. Herman & E. Schatzow, Recovery and Verification of Memories of Childhood Sexual Trauma, 4 Psychoanalytic Psychology 1, 4 (1987). A strong association was observed between the degree of reported amnesia and the age of onset and duration of the sexual abuse. Id. For most victims, it takes years to come to terms with the emotional injuries brought on by the sexual abuse. J. Herman, Father-Daughter Incest 177 (1981).

As a victim of childhood sexual abuse becomes an adult, he or she will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their nonvictimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. A. Browne & D. Finkelhor, Initial and Long-Term Effects: A Review of the Research in D. Finkelhor, ed., Child Sexual Abuse: New Theory and Research, 143, 152-163 (1984). Difficulty in trusting others and sexual maladjustment are additional long-term effects reported by empirical researchers. Id. A childhood sexual abuse survivor might have partially or completely repressed the memory of the abuse, but the trauma might nevertheless be reenacted in nightmares, "flashbacks," and periods of disassociation. J. Herman, D. Russell, & K. Trocki, Long-Term Effects of Incestuous Abuse in Childhood, 143 Am. J. Psychiatry 1293 (1986).

A victim of childhood sexual abuse often denies injury as a coping response, and the shame, self-blame, and secrecy associated with childhood sexual abuse often inhibit a victim's understanding of its effects. See R. Summit, supra at 186-190. The accommodation process, in which the child has assumed responsibility for the abuse and internalized his or her feelings of rage and anxiety, often make victims incapable of discovering their

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injuries for many years. A genuine understanding of the extent and cause of the injuries sustained by a survivor of childhood sexual abuse is unlikely to be developed until the survivor receives mental health treatment. J. Herman, Father-Daughter Incest, *supra* at 177-196.

III. Legal Remedies

The criminal justice system is largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction remote. See V. DeFrancis, *supra* at 187-191. One expert has estimated the conviction rate for childhood sexual abuse at 1% of all cases. D. Russell, The Secret Trauma 86 (1986). Consequently, for many survivors of childhood sexual abuse, civil redress becomes the only available legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutes of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

The Washington Supreme Court, in a 5-4 decision, recently held that the discovery rule does not apply to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). A strong dissenting opinion by Justice Pearson discussed the necessity for application of the discovery rule in these cases. 107 Wn.2d at 80-94. The dissent pointed out that the purpose of the discovery rule is

to provide an opportunity for an adult who claims to have been sexually abused as a child to prove not only that she was abused and that the defendant was her abuser, but that her suffering was such that she did not and could not reasonably have discovered all the elements of her cause of action at an earlier time. The policy behind providing this opportunity has been demonstrated: the nature of child sexual abuse . . . is often so secretive, so humiliating, and so devastating that a victim typically represses the events until the abuse is "discovered"--often through psychotherapy, and often well into adulthood.

107 Wn.2d at 93-94 (emphasis in original). The concurring opinion to the majority's decision noted the strength of the dissent's arguments, but stated that "[t]his is the exclusive province of the legislature, and the judiciary must not invade it." *Id.* at 80. Legislative intervention is therefore appropriate and, indeed, imperative.

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IV. Application of the Discovery Rule

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1200-02 (1950). In instances in which injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers or through the use of reasonable diligence should have discovered the cause of action. See U.S. Oil v. Department of Ecology, 96 Wn.2d 85, 633 P.2d 1329 (1981). In determining whether to apply the discovery rule, courts traditionally have balanced the possibility of stale claims against the unfairness of precluding meritorious causes of action. 96 Wn.2d at 93. "That balancing test has dictated the application of the rule where the plaintiff lacks the means or ability to ascertain that a wrong has been committed." Id.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The psychological trauma associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

The public policy considerations underlying use of the discovery rule clearly support its application in cases involving childhood sexual abuse. The discovery rule, for example, is often applied in breach of trust cases. See, e.g., Peter v. Simmons, 87 Wn.2d 400, 552 P.2d 1053 (1976); Kittinger v. Boeing Co., 21 Wn. App. 484, 585 P.2d 812 (1978); Janisch v. Mullins, 1 Wn. App. 393, 461 P.2d 895 (1969). The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Moreover, the legitimacy of a child's trust in and reliance on his or her family members historically has been recognized by the courts. See Salten, supra at 209.

Similarly, the discovery rule applies to fraud claims, see RCW 4.16.080(4), and failure by an adult to disclose to the child essential information regarding a child's rights and limitations on that adult's rights may be treated as fraud or constructive concealment. See Salten, supra at 210-11. A delayed discovery

rule is appropriate in cases involving fraudulent concealment. See, e.g., Kicklighter v. New York Life Ins. Co., 145 F.2d 548 (5th Cir. 1944). Moreover, the fact that only the defendant has had full knowledge of the wrongful acts is an important policy justification for application of the discovery rule. See U.S. Oil v. Department of Ecology, 96 Wn.2d at 93-94.

As stated more fully above, it is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. See E.S. Blume, supra at 5. In any case, most victims will be unable to connect their injuries with the abuse for many years. Id. Moreover, childhood sexual abuse related injuries often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves until adulthood. M. Tsai, S. Feldman-Summers & M. Edgar, Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women, 88 J. Abnormal Psych. 407, 414 (1979). Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. M. Salten, supra at 202.

Discovery of the cause of a childhood sexual abuse survivor's injuries can also take years. Many victims are convinced that they are to blame for the abuse. See M. de Young, supra at 41. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. See Urie v. Thompson, 337 U.S. 163, 170 (1949). That concept is clearly relevant in childhood sexual abuse cases. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim thus is "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 91, 217-18 (1985). Civil suits act as deterrents to unacceptable behavior. The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

V. Conclusion

To apply the traditional statute of limitations "date of wrongful conduct" rule to civil suits brought by adult survivors of childhood sexual abuse is effectively to deny these plaintiffs a remedy. The discovery rule clearly is appropriate in these cases; application of the rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run until the plaintiff's injuries and the fact that they were caused by the abuse are discovered or should have been discovered by the plaintiff. The latent nature of many of the injuries and the time required to discover their cause, as well as the offender's role in coercing the child's silence, make application of the discovery rule essential in intentional tort suits alleging injuries resulting from childhood sexual abuse. Indeed, these cases are perhaps the most compelling examples of the need for the discovery rule. Legislative action is essential to provide survivors of childhood sexual abuse with a genuine and meaningful legal remedy.

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