



# Sexual Abuse Prevention: Responding to 2019 Legislative Changes

## Expand the Rights for Survivors of Sexual Abuse

Society is becoming increasingly intolerant of child sexual abuse and other forms of sexual assault. This intolerance is showing up in many different ways, but among the most prominent are changes to a survivor's rights to pursue civil legal action. Many states are expanding the civil statute of limitations allowing for lawsuits relating to child sexual abuse to be brought many years after the abuse itself occurred.

Youth-serving organizations will need to prepare for these changes—both in terms of how they engage publicly with such legislative efforts, and how they prepare themselves to respond when historical allegations come to light.

The following pages include our perspective and our recommendations on the pending legislation, summarized as follows:

- We support the broadened civil statute of limitations, and encourage all youth-serving organizations to support these changes, too
- As more cases of historical abuse come forward, staff need to be prepared and know how to respond to these allegations
- Organizations should work with prior brokers and insurance carriers to gather past insurance policies, dating back as far as possible

If you need support navigating this topic, please reach out to one of our Redwoods Consultants.

## Society Has Had Enough

Child sexual abuse is a major public safety and health crisis throughout the world— including the US and Canada. The numbers are stark and alarming: approximately 1 in 10 children will be sexually abused before they turn 18; over 90% of child sexual abuse survivors are abused by someone they know, trust, and respect; and less than one-third of survivors disclose the abuse during their childhood. While the human impact is paramount, there is also an economic dimension to this crisis. In fact, one year’s worth of child sexual abuse has an estimated economic burden of approximately nine billion dollars in the United States alone.

Society is rightfully becoming less tolerant of child sexual abuse, and that intolerance isn’t simply directed at perpetrators. In a noticeable shift from years past, citizens (and by extension juries) are also becoming less tolerant of organizational and institutional failings that can allow such abuse to happen. This much-needed reckoning is showing up in state legislatures around the US. Most prominently, it takes the form of child sexual abuse prevention laws aimed at punishing abusers, holding organizations accountable for their child protection practices and creating avenues for survivors to effectively heal. While these new pieces of legislation vary in scope—some broadening subpoena and grand jury powers for district attorneys, others expanding the definition of an abused juvenile—a commonality among most is that they seek to expand the civil statute of limitations for suits relating to child sexual abuse.

A “statute of limitations” is a legal term referring to *a window in which a criminal trial or lawsuit may be commenced*. In the past, many survivors of child sexual abuse who disclosed their abuse in adulthood—years after the crime occurred—were unable to pursue civil legal action against their abusers or the organizations in which their abuse occurred. That’s because short statutes of limitation barred their claims. In response, these statutes are now being extended in many states to allow survivors of childhood abuse a longer period of time to pursue justice. Some states now allow a child sexual abuse survivor until they reach the age of 50 to bring their claims, others set the age at 35, and still others lie somewhere in the middle. All seek to allow these survivors increased access to justice. With these newly expanded statutes of limitation, many states also establish a “look back” window of one year or more, creating an opportunity for survivors whose claims were previously barred by the statute of limitations to seek justice.

For youth-serving organizations, this shift in the legal landscape naturally creates some well-founded concerns:

- Should you support these legislative efforts or oppose them?
- How do you prepare for the uncertainty that comes with “look back” windows and expanded statutes of limitation?
- How should you respond to a survivor who brings an allegation of historical abuse?

In a time of increasing uncertainty, we hope that this document can serve as an initial guide for how to navigate these changes.

## Becoming an Advocate: Supporting Legislative Efforts

Mission-driven, youth-serving organizations are defined by their commitment to youth. Such organizations seek to create spaces, environments and communities in which all youth are afforded the opportunity to thrive and flourish. A significant portion of this shared mission rests on ensuring the safety of youth. When something bad does happen, the mission also extends to empowering youth and the community to heal appropriately and effectively.

At Redwoods, we firmly believe that the legislative efforts that are sweeping the country will promote healing and increase survivors' access to justice, even though they may challenge youth-serving organizations. This distinction is important. Far from taking a negative view of such legislation, we are advocating for sensible legislation that expands the rights of abuse survivors and we invite you to join us. You and we stand for kids, including those who were abused as kids.

### **The Paperwork: Gathering Past Insurance Policies and Program Records**

Even as we support these legislative efforts, we must also prepare for them. With significantly expanded statutes of limitation and the “look back” windows that come with them, youth-serving organizations may see an increase in allegations of historical abuse that could result in claims for damages, lawsuits or both. It's important for such organizations to be sure that they have adequate insurance coverage to protect themselves, and to also ensure that survivors can be awarded appropriate economic damages, if that's what they seek.

To document appropriate prior insurance coverage, it is important for youth-serving organizations to work with their brokers—past and present—to gather their insurance policies from as far back as possible. Your current broker will then need to review these policies to see what type of coverage they provide for child sexual abuse claims. At Redwoods, our teams are also ready to provide support in gathering and reviewing historical coverage for our customers—please reach out to a Redwoods consultant if you would like more information.

It's important to remember that, if an organization is unable to prove that they had insurance coverage for a period in question, it will be presumed that the organization was not protected by insurance and was thus self-insured. In these instances, the organization would not be able to benefit from insurance protection. Any claims or lawsuits—including the expense of responding to them—would rest solely with the organization. Gathering evidence of past insurance coverage is a critical and proactive step to take as these legal changes are pending, passed or introduced in state legislatures.

It's also important to gather records of program staff, volunteers and participants from as far back as possible. When a victim comes forward, the organization will need to be able to identify accused staff or volunteers and, if appropriate, any other potential victims.

### **What That Call Comes: Preparing to Respond to Historical Allegations**

Following the passage of “look back” windows, many youth-serving organizations will have adult survivors come forward to disclose that they were abused by the organization's staff or volunteers during their childhood. It's crucial that such organizations are equipped and prepared to effectively and appropriately respond to such disclosures.

Survivors who disclose historical child sexual abuse may display a variety of emotions. They might feel scared, fearful, untrusting, angry or guilty. They might feel ashamed or might be struggling to understand or cope with their past. It can be a natural response for organizations or their representatives to operate from a place of fear when abuse, historical or otherwise, is disclosed—they may fear ruining the organization's reputation or triggering legal liability. As such, some may be tempted to avoid responding to the victim or to keep the matter “in-house”. However, while it is entirely appropriate for staff to care about the reputation of their organization, anything other than a complete and good faith effort to care for the victim and investigate historical allegations is both

contrary to mission and also runs a significant danger of causing further damage to the organization's reputation.

Just as is the case when a child discloses abuse, if an adult makes an allegation of historical abuse, it is in everybody's best interests to respond with empathy and to fully investigate. It is the responsibility of organization staff—leadership or otherwise—to whom abuse is disclosed to set aside their emotions, remain calm and in control of their responses and actions, and focus on the survivor's care and emotional, physical and mental health. People are perceptive, and if survivors feel they aren't being heard or believed, they will shut down, stop sharing information and, likely, find other ways to tell their story.

Below are some key points on how to respond. We recommend communicating and discussing these recommendations with staff, ensuring that your teams are taking pro-active steps to be prepared if and when historical cases of abuse do come to light:

- First, assure the survivor that their story is being heard, that it's being believed, and that the organization does not hold them responsible or blame them. Do not make promises, such as saying that the abuser will be held accountable, that the organization will compensate the survivor, or that the information they are sharing will be kept secret. These may not be promises an organization is prepared to keep. Breaking such promises will often increase a survivor's feelings of mistrust and anger. Instead, assure the survivor that the organization wants to help them heal and ask what the organization can do to support them through this.
- Listen carefully to the information the survivor is sharing, but do not push for details or ask investigatory or direct questions about the abuse, beyond the information the victim is readily prepared to share. Leave the investigative process to individuals or agencies that are trained to investigate such incidents and make sure that nothing is done to jeopardize the investigative process.
- The staff member to whom abuse is disclosed will also need to share what has been disclosed to them to others who need to know—particularly supervisors or leadership. Beyond that, confidentiality should always be maintained and the disclosure should not be discussed with people who are not directly involved or responsible.

When a survivor discloses historical abuse, they are often not looking for compensation. Rather, they are most often looking for someone to hear their story, to believe them, to support them, to offer whatever help they can to help the survivor heal, and to be sure that practices are in place to prevent a similar event from happening in the future. Often, the survivor simply wants to know that their abuser is not still working at the organization or with children. Listening with empathy, offering a sincere apology, and providing resources or offers of assistance are often the best way of preventing a disclosure of historical abuse from turning into a lawsuit, which is unlikely to be helpful to either the victim or the organization.

To be clear, “circling the wagons” and avoiding or ignoring the survivor is the worst course of action a youth-serving organization can take—resulting both in renewed trauma and an acrimonious environment where healing becomes more difficult. By contrast, when an organization welcomes the survivor with open arms, open ears, and open hearts, it creates opportunities for everyone to move forward. And when they work diligently with the survivor to ensure that they're heard, believed, and supported through the process, then the entire community gets a chance to learn from the past and better protect those in our care in the future.