FREQUENTLY ASKED QUESTIONS
regarding
Substitute HB 5473, the Statute of Limitation Bill for 2010

What Is the Bill About?

The Bill (also known as Substitute HB 5473) retroactively eliminates the statute of limitation for filing childhood sexual abuse damage claims against Catholic and other non-governmental entities. The Bill permits persons alleging such abuse to wait 50, 60, 70 years or more before filing suit.

Why Do We Have Statutes of Limitation?

A statute of limitation is a deadline for filing a claim. If the deadline is missed, the claim expires, and the parties can rely upon this fact to arrange their affairs. Statutes of limitation serve the common good. They help courts produce accurate results. Delayed claims means litigation after documents have been discarded, memories have faded, and witnesses have died. When California passed a similar bill, the dioceses found themselves defending cases based on allegations against over 100 deceased priests. Trials are unlikely to produce fair results when the only person able to testify about the alleged wrongful conduct is the party seeking the damage award.

What Is the Purpose of the Bill?

Even though the original version of the Bill stated that its purpose is “to protect children by eliminating the statute of limitations for an action to recover damages . . . ,” it does not successfully amend the law that bars victims of abuse in public schools, foster homes, and juvenile detention facilities from bring claims.

Isn’t the Actual Purpose of the Bill to Facilitate Lawsuits Against Catholic Institutions?

Yes. When she announced her sponsorship for HB 5473, Rep. Beth Bye (D- Avon, Farmington, West Hartford) made it clear that her intention was to revive time-barred claims arising from abuse by Dr. George Reardon. Because Dr. Reardon is dead, claims against him are actually being filed against St. Francis Hospital and the Archdiocese of Hartford, both Catholic institutions. During the March 17 Judiciary Committee hearing, every member of the panel of “experts” supporting the Bill were lawyers bringing Reardon-related claims against these two Catholic institutions.

Every time such a bill has passed, it has resulted in flood of claims being filed against Catholic institutions. There are only three instances when such a law was passed. When Connecticut retroactively extended its statute of limitation to 30 years (after the age of majority) in 2002, 81 claims were promptly filed against Catholic institutions. When California opened a one-year “window” retroactively reviving time-barred claims filed during 2003, over 1,100 claims were
filed against Catholic dioceses and religious orders. When Delaware opened a two year “window,” beginning in July 2007, that retroactively revived time-barred claims, 147 persons filed suit against the Diocese of Wilmington.

The Bill Never Mentions the Catholic Church, How Can the Catholic Conference Contend That It Targets Catholic Institutions?

The United States Supreme Court recognizes that a bill can target one religion without naming it in the bill. When the Bill sponsor announces that she wants to revive claims against Catholic institutions related to Dr. Reardon and when each of the "experts" supporting the Bill are already suing Catholic institutions, there is no mystery what is going on with this Bill. There is even less mystery when the Bill states that its “purpose” is to protect all children, but it provides no meaningful remedy for most of the children sexually abused in government settings.

What Is the Catholic Conference’s Position Regarding the Bill?

The Connecticut Catholic Public Affairs Conference ("Catholic Conference") insists that the legislature revise the law related to childhood sexual abuse damage claims in a manner that is "ALL IN, ALL EVEN." This means that the law must treat public and private entities alike, beginning with either the elimination of sovereign immunity or the enactment of charitable immunity. It must cease to have retroactive effect, and it must serve the cause of prevention by promoting earlier reporting of abuse so perpetrators can be removed.

The Catholic Conference opposes the Bill because, it: (1) undercuts sound judicial practice; (2) discriminates against Catholic and private institutions and in favor of government entities even though the problem of childhood sexual abuse in the latter dwarfs the problem in the former; (3) changes the law retroactively; (4) fails to prevent abuse by permitting victims to delay for decades before filing claims; and (5) "hurts the helpers” by diverting resources from the charitable mission of Catholic institutions.

How Does Child Abuse in Government Settings Compare with that in Catholic Settings?

*Government settings.* The problem of childhood sexual abuse in Connecticut government settings is both ongoing and far larger than the problem Catholic institutions largely resolved by 1992. One hundred twelve Connecticut public school teachers and coaches have lost their licenses due to sexual misconduct with students since 1992. Nationally, the teaching credentials of 2,570 public school educators were "revoked, denied, surrendered or sanctioned from 2001 through 2005 following allegations of sexual misconduct" with students. The U.S. Department of Justice study issued in January found that over one in ten youth (i.e., 2,370 teenagers) in state juvenile facilities (including Connecticut) reported an incident of sexual victimization during the previous year. Nineteen Connecticut foster parents, paid by the State, engaged in childhood sexual abuse since 2006. Nine of these occurred in 2009.

*Catholic settings.* For the year 2009, there were only six alleged instances of childhood sexual abuse by priests and deacons in the entire American Church. In Connecticut, there were only three allegations of such abuse by priests or deacons having occurred over the past eighteen years. While even one is too many, these numbers for institutions serving 70 million Catholics are likely without peer.
Can Victims of Child Abuse in Government Settings Sue the Government for Damages?

No. Absent an act of the legislature, such claims are entirely barred by a legal doctrine known as sovereign immunity. There are many published cases of abuse victims trying to sue government entities in Connecticut where courts have consistently dismissed such claims.

Is the Church Excusing Its Own Failures by Pointing at the Government's Failures?

No. The Church is determined never to repeat the problems that occurred in the 1960s, 1970s, and 1980s. It calls for equal treatment of institutional defendants—government institutions and Catholic institutions alike—to ensure that whatever law is passed is really about children and not about targeting one institution for adverse treatment. Discriminatory agenda are put aside only when public policy begins with the principle that all institutions must be equally responsible for preventing child abuse.

What Has the Catholic Church Done to Prevent the Sexual Abuse of Children?

The Catholic Church prevention efforts are without peer. By 1992 most bishops had begun practicing zero tolerance, a policy that reduced abuse by 90 percent. In 2002, the American bishops adopted the Charter for the Protection of Children and Young People that mandated safe environment training, criminal background checks, and annual compliance audits. Connecticut Catholic dioceses and parishes have conducted over 2,500 classes on identifying early warning signs and on mandatory reporting. They trained 234,000 clergy, lay employees, parents, and youth and conducted over 68,000 criminal background checks.

Doesn't the Bill Provide Equal Opportunity for Child Abuse Victims To Sue Government and Non-Government Defendants for Damages?

No. The Bill presently contains a Section 2 that only pretends to level the playing field. Even as presently worded, the Bill does not permit a direct right of action against the State and it does not permit any action against other government entities like towns, school boards, or public schools. It leaves the doctrine called sovereign immunity that bars such suits against most public schools and local government entities in place. Thus, a student victimized by a teacher in a Catholic school can sue the school for damages while a student suffering an identical assault in a public school cannot. HB 5473 leaves this unfairness unaddressed.

Does a Lengthy Statute of Limitation Help Prevent Child Abuse?

No. The most important tool in preventing child abuse is to promptly remove perpetrators from having access to children. One cannot remove a perpetrator without notice there is a perpetrator. This is why state law requires reporting of child abuse within 12 hours after one has “reasonable cause to suspect” abuse is likely. One of the reasons the law permits individuals to file suit for personal injury damages is to put those being sued on notice that they or their personnel may be a risk to others. Prompt claim making helps remove dangerous conditions and people to protect others from being injured.
How Long Is Connecticut’s Present Statute of Limitation?

Connecticut presently gives one bringing a damages claim for childhood sexual abuse against a Catholic or other non-governmental entity thirty years after reaching the age of majority. This means that a child who was abused as a child has until his forty-eighth birthday to bring his claim. This law was passed in 2002. It applies retroactively, even to revive claims that were previously time-barred. Connecticut’s present law is the longest retroactive statute of limitation in the nation. Even the Survivors Network of those Abused by Priests admits that "Connecticut has one of the most liberal statute of limitations for minor victims of sexual assault.”

In Comparison, How Long Are Other Statutes of Limitation in Connecticut?

Connecticut requires claims for negligence or intentional conduct to be brought in two to three years, depending upon the claim. A wrongful death claim must be filed within five years of the act causing the death. These time periods are far shorter than the thirty year period (after the age of majority) already existing in Connecticut law.

Do Victims of Childhood Sexual Abuse Require Additional Time Before Coming Forward with Their Claims?

Some victims contend this is so. The data, however, does not support this contention. It shows that claimants can come promptly forward when they perceive it is in their interest to do so. Since January 2002, there have been twelve major spikes in the number of claims filed by claimants of childhood sexual abuse: the over 1,000 cases filed against Catholic institutions during the massive press coverage in 2002; the almost 1,100 plaintiffs who came forward in California during 2003 when the statute of limitation had been suspended; the 81 plaintiffs who came forward when Connecticut lengthened its statute of limitation in 2002; the 147 plaintiffs who came forward when Delaware suspended its statute of limitation for a two-year period, and the large numbers of new post-petition claims filed in the bankruptcies of the Dioceses of Tucson, Portland, Spokane, Davenport, San Diego, Fairbanks, and Wilmington just before the bar date; and this past year, the quintupling of claims against the Society of Jesus Oregon, Province in its bankruptcy just before imposition of the bar date. The claim making in the post-petition bankruptcy cases is particularly instructive because, in those cases, claimants were given only ninety days to file their claims before they would be barred.

Does It Matter That the Bill Applies Retroactively?

Yes. The Catholic Conference opposes the Bill, in part, because it is retroactive. We all know that it is unfair to change the rules after the fact. It is unfair to evaluate conduct from one and two generations ago by today’s standards. Administrators make decisions based upon the rules that exist when those decisions are made. They adopt policies, purchase insurance, and define document retention policies based upon the rules known to them. Retroactive laws also cannot have any preventive effect. They do nothing protect children today.
Is It "Arbitrary" for a Statute of Limitation to Bar Some Claims While Permitting Others to Proceed?

Most laws draw lines. A person driving 36 mph in a 35 mph zone violates the law while one driving 35 mph does not. Married couples earning $16,700 in 2009 paid no federal income tax for 2009 while those who earned $16,701 did.

Policy makers should ask whether the lines they draw make sense. The argument that a statute of limitation constitutes an "arbitrary line" would commend eliminating all statutes of limitation. This would fill our courts with litigation no matter how old the claim and how stale the evidence. It would encourage claimants to bank their claims and bring them forth when they perceived the value of their claims were greatest.

Connecticut has drawn another line that bars those suffering childhood sexual abuse in a government setting from bringing their claim at any time. When it comes to claims arising from childhood sexual abuse, we see no wisdom in government imposing legal burdens on others that it is unwilling to impose upon itself.

What Do Catholic Institutions Do for Connecticut?

Catholic institutions are called to educate, to heal, to welcome the stranger, and to serve the poor and the elderly. They are doing so. Catholic parishes provide counsel, support, and social opportunities for individuals and families. They form the young in virtue and faith. They visit the homebound, comfort the sick, and grieve with those suffering loss.

Catholic schools in Connecticut educated 33,280 students with a dropout rate below 1 percent, a rate that is 1/20th of that in public schools. They produce outstanding citizens and save taxpayers over $400 million annually. Many of these schools serve in urban areas and help inner city students escape drugs, gangs, and violence.

Catholic Charities, Catholic nursing homes, and other Catholic social services agencies provide emergency clothing and shelter. They provide food pantries, housing, rent and utility assistance. They provide mental health counseling and counseling for troubled families. They help pregnant mothers and new parents. They provide all of these services without regard to religion or ability to pay.

Catholic hospitals employ over 12,000 employees and contribute around $100 million annually in uncompensated medical services. Through the Order of Malta and Malta House for Care, the Archdiocese of Hartford supports free primary medical care for uninsured individuals and families.

It will harm Connecticut to hurt these helpers by enacting a Bill that will reduce the ability to fund these important charities.

Doesn't the Church's Insurers Pay for the Damages Claims?

One of the problems with permitting claims from one and two generations ago to proceed is that there is insufficient insurance. Just as the insurance you bought for your home in 1970 is not
enough for today, liability insurance purchased by Catholic institutions from that time period is insufficient today. For many older cases, there is either no insurance left or the policies can no longer be found. For other older cases where some insurance is available, it is often not enough to cover the full extent of the claim. One cannot impose liability on Catholic institutions for old claims without hurting the helpers and reducing charitable services.

Are Fraudulent Claims More Likely as the Statute of Limitation Is Extended?

Yes. It is a fact that, when the quality of proof declines, the amount of fraud increases. Daniel Lyons’ September 2003 **Forbes** article, "Clergy Sex Scammers," identified the "wicked twist in the Boston clergy sex-abuse scandal: Now that the [Archdiocese] has offered $85 million to settle 552 complaints, two leading plaintiff lawyers are suggesting some of the claims might be bogus." This phenomenon repeated in the Diocese of Tucson bankruptcy. Soon after the settlement pot was fixed, the tort claimants committee itself began identifying the questionable claims. A panel appointed by the Bankruptcy judge eventually threw out 60 such claims.

Doesn't the Bill Eliminate the Problem of False Claims by Mandating Certificates of Merit for the Oldest Claims?

No. The Bill proposes that, for claims filed after one’s 48th birthday, the plaintiff or his attorney must include a certificate of merit. This requirement merely provides political “cover” for those wanting to support this Bill. It is a sham both because plaintiffs and their counsel are already not supposed to file claims without merit and because the requirement does nothing to cure all the problems associated with an extremely long, retroactive statute of limitation as discussed above. When California included a similar provision in its statute, it did not prevent the filing of bogus claims.

What Can Those Opposed to the Bill Do to Help?

Those who oppose this bill should **immediately** contact their state representatives and senators and inform them of their opposition. Please go to the [catholic.org](http://catholic.org), the website for the Connecticut Catholic Public Affairs Conference for your legislators’ contact information and for assistance in contacting them.

--prepared by the Connecticut Catholic Public Affairs Conference (April 8, 2010)