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Testimony in Opposition to Senate Bill 356  
Statute of Limitations for Sexual Contact with a Child  
Senate Committee on Judiciary, Corrections, and Housing  
By Julaine K. Appling, CEO  
January 16, 2008

Thank you, Chairman Taylor and committee members, for the opportunity to testify on Senate Bill 356. My name is Julaine Appling, and I am testifying today as president of Wisconsin Family Action, the legislative action arm of Wisconsin Family Council.

Any abuse of a child by an adult is horrific. Sexual abuse is particularly heinous because it violates every aspect of a precious child. Persons who commit such abuse should be prosecuted and punished to the full extent of the law. Beyond that, any institution, be it public or private, that knows about such abuse and fosters it or even simply ignores it hoping it will go away or is negligent in any way about knowing or recognizing warning signs or establishing safeguards or properly educating those working with children, should also be liable and prosecutable. No school, church, organization or business, whether a government agency or a private entity, should be able to hide such atrocities with impunity.

Additionally, it is vitally important that victims of such abuse find help and healing, as they work through the trauma and the damage they have experienced. While we must admit that sexual abuse of children, sadly has taken place in the confines of churches and other church-related ministries, including parochial schools, those are the exceptions. Such cases are definitely not the rule. Churches and religious ministries are generally the very places where victims of such abuse can find help and healing. Many will testify to that truth. Jeopardizing these institutions will ultimately work against the problem this legislation purports to fix.

However, as with virtually all other crimes, cases involving sexual abuse of a child must have a reasonable and prudent statute of limitations, as a safeguard to all concerned. The bill we are considering today bears all the earmarks of being what I refer to as a “knee-jerk” proposal. While I cannot prove this, I suspect one, if not both, of the primary authors found out about a particular case in which a person alleges he or she was abused by a trusted leader, perhaps, sadly, even a member of the clergy, but could not file a civil lawsuit because he or she was over the age of 35, which means the statute of limitations in this instance had expired. It has been my experience time and again that when legislators try to legislate for a specific incident, assuming it is typical, we get bad legislation—legislation that is far too broad, over-reaches, and in general has intended or unintended consequences that are disastrous. I heard Senator Lazich recently on Wisconsin Public Radio talking about another bill and she rightly said that as a legislator she legislates for the masses, not for individuals and not for specific instances. I believe SB 356 falls directly in this category.

Whether intentional or not, this bill could significantly affect churches, private and parochial schools, ministries, day cares, and organizations such as the Boy Scouts and Girl Scouts. SB 356 proposes to completely remove the statute of limitations for civil lawsuits involving childhood sexual abuse cases and opens a three-year window of opportunity for cases to be filed in situations where the statutes of limitations have already expired.

Wisconsin Family Action is opposed to this proposal for several reasons.

**1) Removing the statutes of limitations sets a precedence.** In Wisconsin, the only crime that has no statute of limitations is murder. Lawsuits for all other crimes must be engaged within prescribed time limits--and for good reason. Appropriate statutes of limitation ensure that prosecution and civil litigation proceed in a timely fashion, while evidence and witnesses are available and fresh. If the statutes of limitation were lifted in cases involving child sexual assault, as heinous as it is, what crime will be next in line to follow suit? More importantly, allowing lawsuits involving situations that happened 30 or 40 or even more years ago absolutely invites tainted evidence, often relying on the very suspect "repressed memory" counseling technique (**see attached document**).

**2) All institutions named in the bills will not be treated equally.** For purposes of the legislation, a "person" against whom damages are sought is extremely broadly defined to include an "individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity." Essentially this means all Wisconsin churches, private schools, day care centers, ministries, and civic organizations, in addition to government entities, are included.

However, while it doesn't show up in this bill, public and private entities will be treated differently. Current law caps the liability of municipal bodies, such as school districts, at \$50,000 per person. The liability of private or not-for-profit entities, such as Christian schools or private day care centers, is not capped. Additionally, the law limits the amount of punitive damages, generally the largest component of such awards, against government entities, while no such limit or exemption exists for private entities, including churches.

This means a single law suit filed against a Christian school or a church, some 40 or more years after the fact, could result in the church or school paying millions in liability and damages, while a public school, for instance, would be liable for significantly less, even though the public entity may be more at fault for the actions of its employee than was the church or private school. Obviously, this inequity means different amounts being awarded to victims--and sets up a scenario where private entities become more likely targets for such lawsuits than government entities.

This legislation essentially holds churches and ministries hostage indefinitely, sometimes for situations long past that those currently involved in the ministry know absolutely nothing about. A single large damage award could completely devastate a church, private school, day care, ministry or service organization such as the Boy Scouts. Those presently involved with these organizations should not be subject to and burdened by the liability for the actions of others long since gone from the organization or perhaps even deceased.

A couple of years ago, the legislature decided to increase the statutes of limitation from three years after a person turns 18 to when the victim of child abuse turns 35 years of age. This change already put Wisconsin among the short list of states with very generous statutes of limitations in cases involving child sexual assault. Additionally, in 2004 former Wisconsin Attorney General Peg Lautenschlager issued an opinion in which she told legislators that opening a window of opportunity for cases in which the statutes of limitation had expired was likely unconstitutional. That advice is as good now as it was then.

In summary, this bill goes entirely too far and must be stopped. It will do far more harm than good in the long run.

I urge you to vote against Senate Bill 356.

Thank you.



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## **Childhood Sexual Abuse Civil Statute of Limitations** ***Memory Repression***

### ***Introduction***

During the 1990s, a wave of memory repression cases flooded state and federal courts in the form of childhood sexual abuse lawsuits. Americans were appalled by stories of trusted members of the clergy and family members—even parents—sexually abusing innocent children. According to the developing memory repression theory, the childhood sexual abuse experience(s) was so traumatic and disturbing for the victim that he/she had suppressed all memory of it until adulthood, when a psychiatrist helped the victim remember the abuse.

Memory repression cases constitute an entirely different category than the more familiar childhood sexual abuse case. In those cases the victim knows he/she was being abused, has remembered the traumatic experience throughout his/her life, and was too scared to tell anyone at the time and/or no one believed the story. In the typical memory repression case, the alleged victim started therapy—usually for depression or an eating disorder—and was informed by his/her psychiatrist that the symptoms were typical for victims of childhood sexual abuse. After numerous therapy sessions, usually including hypnosis, the alleged victim would develop dreams and memories of childhood sexual abuse that the psychiatrist would interpret as solid evidence of abuse. Eventually, and often through suggestive questioning on the part of the therapist, the alleged victim decided on an alleged abuser—usually one or both parents, a close family member, a neighbor or a member of the clergy. The alleged victim would then confront and accuse the alleged abuser(s) privately and publicly and eventually bring a civil lawsuit against them.<sup>1</sup>

The reason for a civil lawsuit is simple: the time lapse between the alleged abuse and the accusation and the dearth of evidence. Because of the significant time lapse, anywhere from 10 to 40 years, even civil statute of limitation laws were typically not generous enough for memory repression cases.<sup>2</sup> Civil statute of limitation laws for childhood sexual abuse usually require claims to be brought within a particular number of years after the incident occurred or the victim came of age (anywhere from 2-10 years). Otherwise, the case is moot for lack of substantial evidence.

### ***Repressed Memories in the Courts***

A legal survey, conducted by the False Memory Syndrome Foundation (FMSF) during the 1990's, documents the litigation of childhood sexual abuse cases based on memory repression evidence.<sup>3</sup> The report indicates that those states with the most lenient statute of limitations laws for civil and criminal cases have had the largest number of filings. In order to admit repressed memory evidence, decades after the alleged abuse, in civil lawsuits, judges have applied various versions of the Discovery Rule and the Disability Exception, effectively extending the applicable statute of limitations.<sup>4</sup>

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<sup>1</sup> <http://www.fmsfonline.org/retract1.html>, accessed 01/10/08.

<sup>2</sup> The FMSF survey was conducted using records of litigation from over 1800 repressed memory claims. Most of the claimants were between the ages of 25-45 and 90% were female. The plaintiffs usually claimed the alleged sexual abuse took place at an early age but that they didn't remember the abuse until three to five decades later. (<http://www.fmsfonline.org/lipton.html#over>, accessed 01/16/08)

<sup>3</sup> <http://www.fmsfonline.org/lipton.html#over>, accessed 01/10/08.

<sup>4</sup> In childhood sexual abuse cases, the Discovery Rule is used to extend the statute of limitations to the time the victim discovered the abuse, or the emotional or psychological ramifications of the abuse. Courts used the Disability Exception to toll the statute of limitations during a period of disability (resulting from repression, dissociation, denial, post traumatic stress disorder (PTSD), multiple personality disorder (MPD), psychogenic amnesia, etc. (<http://www.fmsfonline.org/lipton.html#rise>, accessed 01/16/08)

As of 1999, the year this report was published, nine state supreme courts, including Wisconsin's, have refused to consider whether the discovery rule applied to repressed memory claims because of the lack of substantial evidence behind the theory. In 1997, Maryland's highest court, the Maryland Court of Appeals, said, "[T]he studies purporting to validate repression theory are justly criticized as unscientific, unrepresentative and biased."<sup>5</sup> Civil cases require a preponderance of evidence but repressed memory claims are based entirely upon the alleged victim's repressed memory of the incident(s). Because childhood sexual abuse is such a serious crime and accusation, it should necessitate a high standard of examination, even in a civil lawsuit. However, the repressed memory of the alleged victim and the testimony of the therapist have been enough to slap the accused with huge damages, a ruined reputation and a destroyed family and life.

In some states (e.g., Arizona, Missouri, South Carolina), courts have left the question of whether to admit repressed memory evidence to the jury.<sup>6</sup> Due to the subjective nature of the supposedly expert testimony delivered in memory repression cases, some courts have established an "objective person standard" or instituted procedures to help protect against fraudulent claims. Childhood sexual abuse cases, especially, are so fraught with emotional overtones that it is difficult to retain a stringent standard of litigation. Once a state high court opens the floodgates for repressed memory cases by applying exceptions, however, only comprehensive legislation can stem the tide of lawsuits.

### ***Repressed Memories in the Legislature***

Tolling (extending) the statute of limitations for childhood sexual abuse cases brings up a number of additional issues: 1) Informed consent policies for therapists, 2) Therapy licensing, 3) Level of evidence for civil cases. Even in states where informed consent is an established practice and a high standard exists for both therapy licensing and levels of evidence, the three are rarely consistently enforced.

Informed consent means the therapist obtained consent from their patient for certain therapeutic procedures after informing them of the risks—including the capability of generating false memories—involved in the therapy. Expert testimony should also include therapy disclosures, so that the judge and/or jury are fully aware of the types of therapy that helped "recover" childhood sexual abuse memories.

Most repressed memory cases are filed after the alleged victim has undergone therapy—sometimes from unlicensed or poorly-licensed therapists.<sup>7</sup> Since memory repression theory is a relatively new phenomenon, and a highly controversial topic, therapists who practice it need to be highly regulated. Appropriately stringent licensing laws would allow legislators to monitor therapists and give the courts a standard to apply to expert testimony in repressed memory cases.

Sometimes the victim's repressed memories, and the therapist's testimony, were the only evidence used to condemn a defendant. So-called "second-generation" statutes, enacted in 1994 and 1995 in some states after the deluge of memory repression cases, include provisions making it more difficult to bring fraudulent cases, and more stringent rules for applying evidence. The courts apparently need to be held to an appropriate, objective standard for admitting evidence in repressed memory cases.

### ***Conclusion***

Repressed memory cases caught the judicial and legislative arena unawares and the subsequent legislation and court decisions show it. Notwithstanding the dearth of substantial scientific research on memory repression, judges and legislators bought into the theory and fashioned their legislation and legal decisions accordingly. As a result, they have departed from established procedure and precedent on statute of limitations laws and permissible evidence, opening the floodgates for memory repression lawsuits.

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<sup>5</sup> <http://www.fmsfonline.org/lipton.html#over>, accessed 12/17/2007.

<sup>6</sup> [http://www.smith-lawfirm.com/sol\\_Missouri.html](http://www.smith-lawfirm.com/sol_Missouri.html), accessed 01/14/08.

<sup>7</sup> <http://www.fmsfonline.org/lipton.html#over>, accessed 01/14/08.