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THE CONVERGENCE BETWEEN ILLUSION AND REALITY: LIFTING THE VEIL OF SECRECY AROUND CHILDHOOD SEXUAL ABUSE

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To many victims, ours is a society that hears but does not believe, that believes but does not care. Through devices such as silencing and denial, our stories are denied as part of what society perceives as right and wrong.¹

One of the most horrible truths often denied by society is the existence of childhood sexual abuse. Part of this denial can be attributed to the social barriers which prevent people from speaking of the home as anything but a sanctuary. Although an illusion exists of the home as an ideal place for children, the reality is that often the home is not a safe place for children. By the age of eighteen, 25% of girls will have experienced sexual abuse;² many in their home by a family member.³ As is the case with most sex offenses, the majority of victims are female children and the over-
whelming majority of the abusers are male adults.4

Threats from the abuser, along with the fear of breaking the family apart, force many victims to remain silent for years. A large number of victims repress all memories of the abuse and do not remember the harm until an event in adulthood, such as marriage, death of the abuser, birth of a child, or psychotherapy, triggers recall of these memories. In addition, many victims who have a recollection of the abuse fail to understand the causal connection between the abuse and the frequently resulting psychological problems.6 Unfortunately, when they finally remember the past abuse and are willing and able to speak up, the law silences them once again. For example, before sexual abuse victims may be eligible for crime victims compensation, a police report must be filed. Furthermore, any civil action they bring against their abuser will most likely be time-barred by the statute of limitations.6

4 See Judith L. Herman, Father-Daughter Incest, in Post Traumatic Therapy and Victims of Violence 175, 176 (Frank M. Ochberg ed., 1988) [hereinafter Victims of Violence] (like general pattern of sex offenses, majority of incest victims are female and overwhelming majority of perpetrators are male); see also MacFarlane et al., supra note 3, at 9 (stating that “[l]arge majority of sexual perpetrators appear to be males, and, traditionally, girls were felt to be abused considerably more often than boys”).

Although both sexes experience childhood sexual abuse, this article will mainly focus on the female as the victim and the male as the abuser, which is the most frequently reported and studied scenario. See Haugaard & Reppucci, supra note 3, at 56 (studies show that girls are sexually abused more often than boys); Herman, supra, at 176. Less information is available on the sexual abuse of boys. Id. However, surveys of cases where boys were sexually abused by adults indicated that the majority of perpetrators were male. Id.; see also MacFarlane et al., supra note 3, at 9. “[I]t has recently emerged that boys may be abused much more than previously supposed.” Id. “[S]ex role norms and homophobia are likely to be responsible for severe underreporting of sexually abused boys.” Id.

6 See Haugaard & Reppucci, supra note 3, at 256. Study indicated that women molested as children did not relate their current psychological problems to their childhood sexual abuse experience. Id. Some child abuse victims who are in therapy for psychological problems do not believe that there is any connection between their sexual abuse experience and their current problems. Id. at 133; see also Frederick H. Lindberg, Ph.D. & Lois J. Distad, M.A., Post Traumatic Stress Disorders in Women Who Experienced Childhood Incest, 9 Child Abuse and Neglect 329, 333 (1985) (explaining that many incest victims remain silent “because they did not realize their present difficulties were related to their incest histories”); Denise M. DeRose, Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long Term Damages, 25 Santa Clara L. Rev. 191, 196 (1985) (discussing victim’s unawareness of causal connection between abuse and psychological damage).

6 Several law review articles have been written on the statute of limitations as a bar to civil claims brought by survivors of childhood sexual abuse. See, e.g., Margaret J. Allen, Comment, Tort Remedies for Incestuous Abuse, 15 Golden Gate U. L. Rev. 609, 628-31 (1983) (arguing that discovery exception should be applied to incest-based actions); Lisa Bickel, Note, Tolling the Statute of Limitations in Actions Brought by Childhood Sexual Abuse Survivors, 33 Ariz. L. Rev. 427, 427 (1991) (examining Arizona law and how Arizona courts treat statute of limitations bar to civil actions brought against alleged childhood sexual
This article will discuss how New York State law presents obstacles for survivors of childhood sexual abuse who seek crime victims compensation and civil damages. Part One will address why a survivor of childhood sexual abuse remains silent and will discuss the long-term effects of such abuse. Part Two of this article summarizes the current New York State law regarding crime victims compensation and the relevant statute of limitations issues. Finally, Part Three will recommend legislative changes that would enable survivors of childhood sexual abuse to recover compensation from the New York State Crime Victims Board ("CVB") and civil damages from their abuser.

I. WHY A VICTIM STAYS SILENT

A. Relationships of Trust

After having been sexually abused, most children feel responsible for the abuse or are too ashamed to reveal it. The sexually abused child may experience feelings of self-blame, anger, fear, confusion, shame, and depression. Sexual abuse often occurs...
where there is a relationship based on trust and authority, such as the father/daughter relationship. Moreover, the victim may be coerced into silence by threats of harm to her or her family. The abuser often threatens the victim with a chain of horrible consequences if she refuses to submit to him or discloses "the secret." Some common threats made by the abuser include divorcing of the parents, abandoning the family, inflicting physical harm on the victim or another family member, or sending the victim away from home. Persistent overt or covert threats regarding the consequences if the secret is revealed enable the abuser "to manipulate [the victim] into believing that she is a willing partner."

By assuming responsibility for the abuse, the sexually abused child gains some control over her life. In addition, the victim’s "involuntary participation in the 'secret' increases her tendency to blame herself and view herself as an accomplice to her own exploitation." This feeling of self-blame makes it difficult for a vic-

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and anger); Salten, supra note 6, at 198 (noting that child incest victim is likely to internalize her anger and "develop a distorted and negative self-image").

See Kathy K. Swink & Antoinette E. Leveille, From Victim to Survivor: A New Look at the Issues and Recovery Process for Adult Incest Survivors, in THE DYNAMICS OF FEMINIST THERAPY 119, 119, 121 (Doris Howard ed., 1986) (noting that child abusers are often related to and trusted by their victims); see also MACFARLANE ET AL., supra note 3, at 8. "There is general agreement that children are sexually abused by people close to them—relatives, step-relatives, friends of the family, neighbors, and authority figures." Id. In fact, a study indicated that 78% of reported incest involves fathers and daughters. Id. at 9.

See GOODWIN, supra note 8, at 6 (explaining how sexual abusers "ensure silence" of their victims by threatening loss of love or loved ones or making death threats or covert threats); see also Allen, supra note 6, at 615 (describing "threats of dire consequences" if daughter revealed abuse).

See JUDITH L. HERMAN, FATHER-DAUGHTER INCEST 88 (1981). Sexual abuse victims often were threatened with the "most dreadful consequences" if they revealed the secret. Id.; see also Swink & Leveille, supra note 9, at 122. Feelings of guilt, fear of breaking up the family, hurting other family members, and fear of not being believed may prevent an abused victim from revealing "the secret." Id.

See HERMAN, supra note 11, at 88 (consequences if incest victim told secret include nervous breakdown of mother, divorce of parents, imprisonment of father, victim sent away from home, or even severe bodily harm to victim); MACFARLANE ET AL., supra note 3, at 227. Although the primary fear of sexually abused victims is of separation and abandonment, physical threats may also exist. Id. "In one case, a neighbor threatened to cut up a child using tiny pieces of glass and sharp knives if she told what he had done to her." Id.

Lamm, supra note 6, at 2193; see Swink & Leveille, supra note 9, at 121 (victim learns to manipulate abuser as he has manipulated her).

See Lamm, supra note 6, at 2193 (victim has sense of control over her life by believing she is responsible for abuse).

Nabors, supra note 6, at 157; see Lindberg & Distad, supra note 5, at 332 (study revealed that all 17 women interviewed felt guilt or shame concerning their "'participation' " in sexual abuse).
tim to discuss the abuse with anyone. Generally, it is only when an individual is no longer in contact with her abuser, or no longer emotionally or financially dependent on her abuser, that she realizes that she was harmed and seeks recourse. Realizing that she has been victimized and is not to blame for the sexual abuse involves a complicated process for the abused survivor—a process which can take years. In fact, this lengthy process may make it virtually impossible for a sexually abused victim to bring a civil action within the time allotted by the statute of limitations.

B. Repressing the Memories

Psychological responses to child sexual abuse include denial, numbing of emotions, and amnesia. Often the victim learns to alleviate the pain by dissociating the experience or losing all consciousness of it. Some children do not remember that they were abused at all. The blocking out of childhood sexual abuse memories may also be related to Multiple Personality Disorder ("MPD"). MPD often precludes the timely filing of police reports and civil claims. First, the diagnosis of MPD and its causes usually occurs later in life. Secondly, the fragmentation of a victim's personality delays her realization that she has been abused. When a victim has repressed her memories of the abuse or when the memories are too painful to confront, the victim may not understand that the abuser's behavior has caused her psychological harm. This circumstance often prevents her from bringing a civil action within the time allotted by the statute of limitations.

16 See Lindberg & Distad, supra note 5, at 332-33. Adult incest survivors experience difficulty with remembering painful events and understanding that the incest experience was not their fault. Id. at 333; Nabors, supra note 6, at 162 (discussing complicated and lengthy process of recovery for adult incest survivors).

17 See Lamm, supra note 6, at 2194 ("classic psychological responses to incest trauma are numbing, denial, and amnesia"); see also Lindberg & Distad, supra note 5, at 332 (discussing victim's impaired emotionality including amnestic episodes or numbing of body parts).

18 See Lamm, supra note 6, at 2194 (victim may cope by dissociating or repressing memory of abuse).

19 See Goodwin, supra note 8, at 160 (reporting that overwhelming majority of patients with Multiple Personality Disorder ("MPD") were sexually abused as children); see also Handler, supra note 6, at 718 (stating that MPD develops as "defense mechanism utilized to block the memory of experiences too painful to recall," such as child abuse).

20 See Handler, supra note 6, at 718 (diagnosis of MPD usually occurs in "third or fourth decade of life").

21 See Goodwin, supra note 8, at 166-67 (study of adult incest victims who suffered from MPD revealed that memories of sexual abuse were often incomplete or suppressed); Handler, supra note 6, at 718-19 (fragmentation of victim's personality caused different levels of awareness of sexual abuse).
suit.

"[Through] research that began in the mid-1970s, psychiatrists and social scientists have shown repeatedly that sexually abused children cope with the trauma [of sexual abuse] through a process of self-hypnosis and selective memory loss that can block [the experiences] from their minds long into adulthood."\(^2\) It is often through a triggering event or psychotherapy that a victim recognizes the relationship between the abuse and her psychological pain.\(^2\) Many victims do not undergo therapy until many years after the abuse has occurred. Through therapy, they gain an understanding of the cause of their pain and injuries. Generally, realization of the injuries they have suffered occurs well after the victim has reached the majority age and long after the statute of limitations has run. In fact, one study indicated that the average time lapse between the last date of sexual abuse and counseling was seventeen years.\(^2\)

C. Long-Term Psychological and Physical Effects

Long-term effects of childhood sexual abuse include difficulties with emotions, self-perception, social functioning, and physical well-being.\(^25\) Adult survivors of childhood sexual abuse who have not been treated constitute a disproportionately large number of individuals in need of both inpatient and outpatient psychiatric treatment. Symptoms of depression may even appear decades after the abuse.\(^26\) For example, depression is very common among

\(^{21}\) Thomas J. Lueck, Sharing Horrors of Childhood Sexual Abuse, 3 Join Legal Debate, N. Y. Times, May 5, 1992, at B7 (paraphrasing Judith Lewis Herman, professor of psychiatry at Harvard Medical School).

\(^{22}\) See Jeffrey R. Anderson & Susan Bedor, Statute of Limitations in Sexual Abuse Actions: Victimizing the Victim, MINN TRIAL LAW., Summer 1988, at 9 (sexually abused victim often blocks abuse "out of their memory until a situation occurs that triggers the memory or they receive counseling"); see also Lamm, supra note 6, at 2195 (triggering mechanism, such as psychotherapy, helps victim relate abuse to current psychological problems).

\(^{23}\) See Lindberg & Distad, supra note 5, at 332. "For the women in this study, the average time period between the last occurrence of incest and present treatment was 17 years." Id.; see also Anderson & Bedor, supra note 23, at 9 (discussing recent study that showed average time lapse between incestuous abuse and counseling was seventeen years).

\(^{24}\) See HERMAN, supra note 11, at 51-52. A study of women who had been molested as children revealed common feelings of shame, guilt, depression, low self-esteem, isolation, and experienced difficulty in interpersonal relationships. Id.; Vincent J. Felitti, M.D., Long-Term Medical Consequences of Incest, Rape, and Molestation, 84 S. Med. J. 328, 331 (1991) (adult patients with history of childhood sexual abuse suffered from chronic depression, obesity, marital instability, and psychosomatic symptoms, such as recurrent headaches).

\(^{25}\) See Felitti, supra note 25, at 329 (adult sexual abuse victims experience chronic de-
women who have experienced sexual assault as children.27

Survivors of childhood sexual abuse often exhibit self-destructive behavior, including suicide ideation, and other intentional acts of self-harm, such as the cutting and burning of oneself.28 Self-destructive behavior, in the form of sexual acting out and drug addiction, has caused many child sexual abuse victims to engage in HIV high-risk behavior.29 These victims learn at a young age that they lack control over their bodies. Thus, as adults, it is difficult for them to practice safe sex and care about a body that they have never truly owned.

Other symptoms exhibited by child sexual abuse survivors include anxiety attacks, flashbacks, chronic and severe sleep disorders (including nightmares), chronic fearfulness, and hypervigilance.30 Many survivors also experience difficulty in their interpersonal relationships and in maintaining normal sexual relations.31 Specifically, child abuse victims do not easily trust others.
and consequently experience alienation in their relationships with men and women. In addition, survivors of child sexual abuse are less likely to marry, and if they do, are more likely to divorce and remarry several times.

Child sexual abuse survivors often suffer from a psychiatric disorder, such as dissociative behavior, MPD, or Post-Traumatic Stress Disorder ("PTSD"). In addition, they are inclined to self-medicate with alcohol and drugs. "Residential treatment programs for substance abuse are finding that as many as 90% of the women and 60% of the men in treatment were sexually abused as children."

One of the most disturbing statistics on childhood sexual abuse is that many women victimized as children will be revictimized later in life by both strangers and intimates. In one random sample study, 68% of incest victims later experienced a rape or attempted rape by a nonrelative compared with 38% of women raped who were not incestuously abused as children.

Such evidence has been misinterpreted as proving that victims are responsible for their own victimization by placing themselves...
Childhood sexual abuse in dangerous situations. However, there are a multitude of plausible arguments offered to explain why revictimization of incest survivors occurs at such an alarming rate. Explanations center on how the initial victimization breaks down the ability of the survivor to protect herself against future victimization. For example, some women may cope with abuse by using sex to get attention. A survivor’s promiscuous behavior makes her vulnerable to subsequent abuse.40 Because her trust has been betrayed by a loved one, an incest survivor might have impaired ability to judge the trustworthiness of adults.41 Her sense of powerlessness may make her overly identify with the role of victim. Hence, she might not be able to muster the strength to fend off future attackers.42 Finally, a survivor may view herself as a “bad girl” and become involved in delinquent activities, such as prostitution and drug abuse, that expose her to violence.43

However, focusing only on the victim tends to blame her for the revictimization. Sexual offenders are adept at manipulating people and often prey on those who have been previously abused. Offenders may be intrigued by her “daring past” or may see the victim as “damaged goods,” never to be repaired.44 Offenders may also seek out women who seem detached from family and friends.45 Since sexual abuse victims are often distanced from family and friends because of guilt, shame, and disbelief, they may be more vulnerable to such offenders’ attacks.

The physical consequences of child sexual abuse include somatic disorders, such as abdominal pain, headaches, and eating disorders.46 Furthermore, a recent survey found a strong predisposition to obesity among women who were sexually abused as chil-

40 Id. at 167. “Women who cope with their incestuous abuse by becoming promiscuous are likely to be very vulnerable to rape and other sexual assault.” Id.
41 Id. at 168 (revictimization may occur as result of sexually abused victim’s inability to judge trustworthiness of others).
42 Id. at 169 (discussing powerlessness and frustration that sexually abused victim feels).
43 Id. at 170 (stigmatization of abused girls as bad or “damaged goods” may lead to revictimization).
44 Id. at 171 (discussing how sexual offenders may react when they have knowledge of victim’s prior abuse).
45 Id. (discussing how sexual offenders look for psychological and social vulnerabilities in potential victims).
46 See MacFarlane et al., supra note 3, at 125. Physical manifestations of incest abuse include “migraines, backaches, gastrointestinal and genitourinary problems, lethargy, unexplained muscle failure, . . . and ringing in the ears.” Id. Incest victims also suffer from eating disorders, such as anorexia, bulimia, or compulsive over-eating. Id. at 126.
dren; one of four women studied was more than 100 pounds overweight.\textsuperscript{47}

Even when adults reveal their past abuse to a person in authority, it doesn’t always mean that she will be supported and believed. Until recently, therapists were not well versed in the treatment and identification of childhood sexual abuse.\textsuperscript{48}

II. HOW THE CRIME VICTIMS COMPENSATION REQUIREMENTS AND STATUTES OF LIMITATIONS SILENCE CHILD SEXUAL ABUSE SURVIVORS

A. The New York State Executive Laws

In New York State, survivors of childhood sexual abuse who seek compensation for their injuries either by filing a civil action against their abuser or by filing a claim with the CVB face formidable legal obstacles, including police reporting requirements and the statute of limitations.

In 1966 the New York State legislature established CVB to provide financial assistance to crime victims for crime-related injuries and losses. Victims of crime who have sustained physical injuries can seek compensation within one year of the discovery of the crime or within a reasonable time thereafter, if a justification for the delay can be demonstrated.\textsuperscript{49} Additionally, to be eligible for compensation, a crime victim must file a police report.\textsuperscript{50} Since sexual assault is considered a physical injury under the CVB definition, child sexual assault survivors are entitled to reimbursement for out-of-pocket medical and counseling expenses as well as loss of earnings.\textsuperscript{51} Counseling is also covered under the law for family members of sexual assault survivors.\textsuperscript{52} There is no limit on the amount a victim or her family can receive for medical or counseling expenses. However, loss of earnings is limited to $20,000

\textsuperscript{47} See Felitti, \textit{supra} note 25, at 329 (study of long-term consequences of childhood sexual abuse).

\textsuperscript{48} See Herman, \textit{supra} note 11, at 180-81 (discussing how many therapists lack necessary training and experience to counsel incest victims).

\textsuperscript{49} N.Y. EXEC. LAW § 625(2) (McKinney 1982 & Supp. 1992) (requiring claimant to file claim within one year after discovery or occurrence of crime or within one year after victim’s death but allowing extension of time if “good cause” is shown).

\textsuperscript{50} Id. § 631(1).

\textsuperscript{51} Id. § 631(2).

\textsuperscript{52} Id. § 626(1), (2) (unnamed partners are not eligible for counseling).
annually.58

CVB’s compensation expenditures are matched at a 40% ratio by the federal government. Funds are allocated through the federal Victims of Crime Act ("the Act").54 Section 1403(b)(2) of the Act stipulates that in order to qualify for federal awards, state programs must "promote victim cooperation with the reasonable requests of law enforcement authorities."65 Although the Act’s language does not specifically require a police report, most states, including New York, interpret the language as requiring one.

Many child sexual assault victims do not immediately report the sexual assault to the police out of fear of public exposure, threats by the victimizer, and the perception of social hostility and disbelief. The CVB does, however, accept police reports filed years after the childhood sexual abuse has occurred. Unfortunately, many survivors of childhood sexual abuse are reluctant to disclose their abuse to the police even years after the fact. Their reluctance is compounded by a lack of confidence in the criminal justice system.

In order to make crime victims compensation a viable remedy for child sexual abuse survivors, the New York State legislature must amend the Executive Law to allow CVB to accept proxy reports from hospital officials or rape crisis counselors who are trained to recognize psychological and physical evidence of sexual assault. Reporting the crime to social service providers will accomplish the federal government’s goals of verifying the crime and preventing future victimization by the perpetrator. Further, if the victim receives adequate compensation and continues counselling, it may enable her to understand her victimization, have the strength to report the crime, and actively prosecute the offender, as well as pursue civil remedies.

The CVB, as well as other crime victims in New York State may also benefit from the victim’s pursuit of civil remedies. After awarding a victim compensation, the CVB acquires a lien on the proceeds of any civil recovery by the victim from the person liable for the crime.66 Therefore, if a survivor of childhood sexual as-

58 Id. § 631(2).
55 Id. § 10602(b)(2).
66 N.Y. ExEc. Law § 634(2) (McKinney 1982 & Supp. 1992) (authorizing lien attachment on claim proceeds after adjustments for reasonable and necessary expenditures are made).
sault received CVB compensation and then brought a successful civil action against her abuser, the CVB would expect to be reimbursed for its compensation award. The importance of bringing a civil action should not be underestimated for either the CVB or the child sexual abuse victim.

A civil action can further the victim's healing process by enabling her to confront the abuser directly and seek damages. It also grants society the opportunity to publicly denounce childhood sexual abuse and send a message that it is unacceptable behavior. Although similar benefits are available for survivors who prosecute the offender, a criminal proceeding involves a higher standard of proof and a shorter statute of limitations due to tolling provisions for civil actions. Furthermore, the victim is not a party to the action. Additionally, the criminal courts are limited in their ability to compensate victims for their injuries. Thus, a civil action is more practical because, if successful, the victim can receive compensation for her pain and suffering, loss of earnings, and treatment.

The value of civil actions, however, is limited for survivors of childhood sexual abuse because of statutes of limitation. "Statutes of limitation are statutes of repose, and are such legislative enactments as prescribe the periods within which actions may be brought upon certain claims or within which certain rights may be enforced." They are designed to meet such policy objectives as fairness to the defendant, prevention of stale suits that might present evidentiary problems, and discouraging plaintiffs from "sleeping on their rights." Legislatures balance these policies when they determine the length of time for a plaintiff to bring a suit after the cause of action accrues. In most personal injury tort cases, the cause of action accrues on the date the injury occurs. This rule however is not absolute and exceptions have been made by the legislatures and courts. Almost all states provide an exception to the statute of limitations when the plaintiff is a minor. In these situations, the statute of limitations is tolled until the victim

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87 See Nabors, supra note 6, at 159 (discussing advantages of civil action).
88 BLACK'S LAW DICTIONARY 835 (5th ed. 1979); see also Note, Developments in the Law: Statutes of Limitations, 63 H ARV. L. REV. 1177, 1179 (1950) (discussing statutes of limitations).
89 See Nabors, supra note 6, at 160-62 (explaining policy reasons for and purposes of statutes of limitation).
reaches the age of majority, whereupon the time period will begin to run.

In New York State, there is no specifically defined tort of "incest" or "childhood sexual abuse." As a result, survivors of childhood sexual abuse seeking civil damages usually bring actions for personal injury, assault and battery, intentional infliction of emotional distress, or negligence against their abusers. These tort actions have statutes of limitations ranging from one to three years after the injury occurs. However, the period within which a child victim must bring a civil lawsuit does not begin to run until the child reaches the age of eighteen.

B. Exceptions to the Statute of Limitations

To date, survivors of childhood sexual abuse in New York have not successfully brought civil claims outside of the legislatively-imposed statutes of limitations. Traditionally, New York State has restricted claims brought beyond the statutes of limitations. The New York State Civil Practice Law & Rules ("CPLR") expressly states that no court shall extend the time limited by the legislature for the commencement of an action. The legislature, however, has created a number of exceptions to statutes of limitation, such as insanity, equitable estoppel, and delayed discovery in limited circumstances.

Under the CPLR, statutes of limitation may be extended for a person who is insane at the time the cause of action accrues. However, in no event may the time limitation be extended beyond ten years after the cause of action accrues. The standard for ap-

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61 Id. § 208. New York law defines an infant as a "person who has not attained the age of eighteen years." Id. § 105(j).
62 Id. § 201 (precluding courts from extending statute of limitations prescribed by legislature).
63 Id. § 208 (extending time to commence action if person was an infant or insane at time cause of action accrued).
64 N.Y. GEN. OBLIG. LAW § 17-103(4)(b) (McKinney 1989) (agreements to waive statute of limitations does not affect court's power "to find that by reason of conduct of the party to be charged it is inequitable to permit him to interpose the defense of the statute of limitation").
65 N.Y. CIV. PRAC. L & R. § 214-a (McKinney 1990) (malpractice discovery exception for foreign objects); id. § 214-b (Agent Orange exception for Vietnam veterans); id. § 214-c (toxic tort injuries).
66 Id. § 208.
67 Id.
plying the insanity exception is set forth in *McCarthy v. Volkswagen of America, Inc.*, where the New York Court of Appeals held that the exception should "extend . . . to only those individuals who are unable to protect their legal rights because of an over-all inability to function in society," not "to an individual claiming a mere post traumatic neurosis."*

Under New York's General Obligations Law, courts may prevent a defendant from asserting a statute of limitations defense when the defendant's conduct has estopped the plaintiff from filing the suit. The standard for applying the equitable estoppel exception is set forth in *General Stencils, Inc. v. Chiappa*, where the Court of Appeals held that an aggrieved plaintiff must show that the defendant wrongfully induced the plaintiff to postpone the filing of a suit or fraudulently concealed a cause of action unknown to the plaintiff. In addition, the plaintiffs must show that they have exercised due diligence in discovering the wrong.

Finally, the New York State legislature has created a narrow exception to the statute of limitations by allowing a cause of action to accrue when the plaintiff discovers, or reasonably should have discovered, both the injury and that the injury was caused by the defendant's misconduct. The legislature developed the delayed discovery rule in the context of medical malpractice actions involving foreign objects being placed in the body, exposure to Agent Orange, and latent exposure to toxic substances.

C. Exceptions and the Courts

New York courts have refused to apply the insanity, equitable estoppel, and delayed discovery exceptions to cases involving childhood sexual abuse. The insanity and the equitable estoppel exceptions to the statute of limitations in childhood sexual abuse

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69 Id. at 548-49, 435 N.E.2d at 1075, 450 N.Y.S.2d at 460.
70 N.Y. GEN. OBLIG. LAW § 17-103 (4)(b) (McKinney 1989).
72 Id. at 128, 219 N.E.2d at 171, 272 N.Y.S.2d at 339-40.
73 See Handler, *supra* note 6, at 723. "An overreaching restriction on equitable estoppel's inherently flexible nature" is that a plaintiff must demonstrate that she exercised due diligence in discovering the wrong. Id.
75 Id. § 214-a.
76 Id. § 214-b.
77 Id. § 214-c.
cases have been denied by the New York Supreme Court, Appellate Division, First Department in *Hoffman v. Hoffman*, the United States Court of Appeals for the Second Circuit, which applied New York State law, in *Smith v. Smith*, the New York County Supreme Court in *Gallas v. Greek Orthodox Archdiocese of North & South America*, and the Nassau County Supreme Court in *Burpee v. Burpee*.

In *Hoffman*, the First Department refused to apply the insanity and equitable estoppel exception on behalf of Wendy Hoffman, a forty-five year old adult survivor of childhood sexual abuse. Ms. Hoffman alleged that she suffered from post-traumatic neurosis as a result of being sexually abused by her father and uncle. The court stated that "[i]t is insufficient for plaintiff to argue that the gravity of the alleged tortious conduct of the defendants, in and of itself, gives rise to an estoppel. Nor has the plaintiff demonstrated any fraud, misrepresentation, threat, or deception which caused her to refrain from filing a timely action." The court noted that Ms. Hoffman's allegations of post-traumatic neurosis were also "insufficient to invoke any toll under the 'insanity' provisions of CPLR 208."

Similarly in *Smith*, the Second Circuit refused to broaden the use of the insanity and equitable estoppel exceptions to the statute of limitations in a case brought by Jeanne Allyn Smith, a thirty-two year old woman, against her father. Ms. Smith sought to use the doctrine of equitable estoppel by claiming that her father's initial conduct of sexual abuse made it impossible for her to bring a cause of action against him. The Second Circuit held that the conduct that prevented Ms. Smith from initiating the action did not result from a separate and independent wrong aside from the father's initial wrongdoing and, therefore, the father should not be equitably estopped from interposing his statute of limitations.

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78 162 A.D.2d 249, 556 N.Y.S.2d 608 (1st Dep't 1990).
79 830 F.2d 11 (2d Cir. 1987).
82 162 A.D.2d at 249, 556 N.Y.S.2d at 608-09.
83 Id. at 249, 556 N.Y.S.2d at 608.
84 Id. at 249, 556 N.Y.S.2d at 608-09.
85 Id. at 250, 556 N.Y.S.2d at 609.
86 Smith v. Smith, 830 F.2d 11, 12 (2d Cir. 1987).
87 Id. at 13.
The court also noted that Ms. Smith's post-traumatic neurosis was insufficient to invoke any toll on the basis of insanity and, "even if applicable, [it] would not have extended her right to sue until 1985, when she was thirty-two years of age."89

In Gallas, the New York County Supreme Court held that the statute of limitations stood as a bar to Despina Gallas’s allegations of sexual abuse against Bishop Draconakis and the Greek Orthodox Church.90 Ms. Gallas brought her claim when she was thirty-one years old and argued that it would be inequitable to apply the statute of limitations in her case because "the church lured her through promises and coercion to forgo bringing any action, and to cloak the entire affair with a veil of silence to avoid embarrassment."91 Despite Ms. Gallas’s allegations of duress, the Court held that she should have filed a timely action against the church and that there was no justification for her failure to commence the action.92

Recently, in Burpee,93 the Nassau County Supreme Court denied the use of equitable estoppel by Sheryl Burpee, a twenty-seven year old survivor of childhood sexual abuse, to overcome her father’s statute of limitations defense.94 As a child, the plaintiff suppressed her memory of the abuse.95 While undergoing therapy with her father in 1990, he admitted that he had sexually abused her.96 She brought suit and her father raised the statute of limitations defense.97 She argued that her father should be equitably estopped from using this defense because of: (1) the psychological trauma from the experience which caused her to repress her memory of the abuse until her father’s admission in 1990; (2) the horrible nature of her father’s conduct; (3) her father’s “hiding” of his misdeeds by remaining silent; and (4) her father’s admission

88 Id.
89 Id. at 12.
91 Id. at 87.
92 Id. at 88-89.
94 Id. at 469-70, 578 N.Y.S.2d at 361-62.
95 Id. at 467, 578 N.Y.S.2d at 360.
96 Id.
97 Id.
to the crime, which mandated that he be brought to justice.98

The court denied Sheryl Burpee's use of equitable estoppel on the grounds that: (1) psychological trauma and repression therefrom are insufficient to avoid the statute of limitations; (2) the gravity of the defendant's conduct, in and of itself, did not give rise to an estoppel; (3) additional overt action by the defendant, not mere silence after the initial wrongdoing, did not prevent the plaintiff from discovering the child sexual abuse; and (4) admissions by the defendant did not warrant avoidance of the statute of limitations.99 The court stated that in order to avoid the statute of limitations on insanity and equitable estoppel grounds, an adult survivor of child sexual abuse must demonstrate that she suffered "not merely from a neurosis but was beyond question 'overall mentally disabled' . . . [or] that she was actually induced by the defendant not to move legally against him or that he actually, by some overt conduct, prevented her from protecting her rights in a timely fashion."100

New York courts have also refrained from broadening the use of delayed discovery to overcome the statute of limitations defense. In Bassile v. Covenant House,101 the New York County Supreme Court refused to judicially adopt the delayed discovery rule.102 Daryll Bassile, a thirty-one year old man, alleged that he had been sexually abused when he was fourteen years old by Father Bruce Ritter, the founder of Covenant House.103 Mr. Bassile alleged that Father Ritter's sexual abuse produced certain psychological coping mechanisms which made him "unable to perceive 'the existence or nature of his psychological and emotional injuries and their connection to the sexual exploitation . . . .' "104 The plaintiff also claimed that "he did not know or have reason to know of his injuries until April 1989" when he was 30 years old.105 To convince the court, he relied on a number of cases from other jurisdictions.106 Despite Mr. Bassile's argument, the

98 Burpee, 152 Misc. 2d at 467, 578 N.Y.S.2d at 360.
99 Id. at 468-70, 578 N.Y.S.2d at 360-62.
100 Id. at 470-71, 578 N.Y.S.2d at 362.
102 Id. at 91-92, 575 N.Y.S.2d at 236-37.
103 Id. at 89, 575 N.Y.S.2d at 234.
104 Id. at 89, 575 N.Y.S.2d at 234-35 (quoting from complaint).
105 Id. at 89, 575 N.Y.S.2d at 235.
106 Bassile, 152 Misc. 2d at 93 n.2, 575 N.Y.S.2d at 237 n.2.
court granted Covenant House's motion to dismiss on the ground that it was time-barred and by ruling that the discovery rule was limited to certain narrow categories and that any modification of the statute of limitations when invoked in childhood sexual abuse cases would have to be legislatively enacted. The court also stated that although Mr. Bassile was advocating a delayed discovery rule, it was not clear that this was a satisfactory solution for plaintiffs alleging childhood sexual abuse as adults.

Citing Bassile, the United States District Court for the Southern District of New York also refused to apply the delayed discovery rule in Schmidt v. Bishop, another case in which an adult survivor of childhood sexual abuse had accused a member of the clergy. Despite New York's position, a number of other states have created statutory and judicial delayed discovery rules. There is a split of authority over exactly how the discovery rule should be applied when a survivor of childhood sexual abuse brings a civil claim against the alleged abuser.

A few courts have allowed application of the discovery rule regardless of whether the plaintiff completely repressed the memory of the abuse. Under this interpretation, the plaintiff need claim only that she did not discover within the statutory period that her current psychological problems were caused by the abuse she suffered as a child. Other courts have taken a more restrictive approach, limiting discovery rule application to those cases in which the plaintiff blocked out all memory of [the abuse], recalling it only as an adult. In these jurisdictions, if a plaintiff failed to repress completely the memory of [abuse] she cannot get the benefit of the discovery rule.

Additionally, a plaintiff may be precluded from using the dis-

107 Id. at 95, 575 N.Y.S.2d at 238.
108 Id. at 93-94, 575 N.Y.S.2d at 237-38.
110 Id. at 324, 329-330.
111 See, e.g., WASH. REV. CODE ANN. § 4.16.340 (b) (actions based on childhood sexual abuse may be brought within three years from victim's discovery of sexual abuse or when victim should have reasonably discovered abuse); see also Lueck, supra note 22, at 1 (stating that Connecticut recently extended statute of limitations in sex crimes to enable victims to bring civil actions against their abusers until they are thirty-five years old).
112 See Lamm, supra note 6, at 2191 (describing use of discovery rule in civil incest actions).
113 Id.
covery rule if a court determines that she did not discover the abuse within a "reasonable" amount of time. Hearings must be held to determine whether the plaintiff acted like a reasonable person in remembering the abuse.\textsuperscript{114} These hearings may tend to re-victimize the adult survivor of childhood sexual abuse because they require the imposition of a "reasonableness standard." The discovery rule would run, not from when the adult survivor discovered the abuse, but when she "should have known" of the abuse.\textsuperscript{115} Differences in these two points of time may lead to victim-blaming, with survivors questioning why they did not discover the abuse within a reasonable amount of time. Victims will not only blame themselves for the sexual abuse, but will now begin to hold themselves responsible for not discovering it sooner. As stated by Ellen Gesmer in her testimony before the New York State Senate and Assembly Code Committee, "[i]t is simply impossible . . . to have any objective standard of when someone should have known that her psychological problems were caused by childhood sexual abuse."\textsuperscript{116}

In light of these considerations, the Nevada Supreme Court refused to apply the discovery rule to a claim brought by the survivor of childhood sexual abuse in \textit{Petersen v. Bruen}.\textsuperscript{117} The \textit{Petersen} court ruled that the use of the discovery rule might increase stress for the adult survivor of childhood sexual abuse and feared that courts might focus on the reasonableness of the survivor's discovery rather than on the actions of the abuser.\textsuperscript{118} The court, however, refused to bar the plaintiff's action by applying the statute of limitations, holding that "no existing statute of limitations applies to bar the action of an adult survivor [of childhood sexual abuse] when it is shown by clear and convincing evidence that the plaintiff has in fact been sexually abused during minority by the named

\textsuperscript{114}See Testimony of Ellen Gesmer Before the Senate and Assembly Code Committees Joint Hearings on the Statute of Limitations for Sexual Offenses Committed Against Children, June 4, 1992, at 5 (available at office of Senator Dale Volker, Albany, N.Y.). Ms. Gesmer, an attorney who represents victims of rape and sexual assault, stated that a victim must endure "a lengthy discovery process and a hearing" to determine when the victim discovered the abuse. \textit{Id.}

\textsuperscript{115}\textit{Id.} (explaining that victims may encounter obstacles if courts were to apply objective standard to discovery rule).

\textsuperscript{116} \textit{Id.}

\textsuperscript{117}792 P.2d 18, 23-24 (Nev. 1990).

\textsuperscript{118} \textit{Id.} at 23.
However, "the need for clear and convincing evidence to avoid the statute of limitations defense requires the plaintiff to prove her case at the pleading stage." Such evidence would not be available to most plaintiffs.

Recently in New York, in Anonymous v. Anonymous, a twenty-eight year old woman sued a former neighbor for sexually abusing her over a twenty-year period. Among her claims, the woman alleged assault and battery, governed by a one-year statute of limitations, as well as negligence, which is governed by a three-year statute of limitations. The defendant brought a motion for summary judgment to dismiss the complaint as time-barred under the statute of limitations. In a landmark ruling, Justice Oshrin of the Suffolk County Supreme Court ordered that, before the complaint was dismissed, a factual hearing had to be held to determine whether the woman was unable to bring her complaint during the statutory period because of insanity or the equitable estoppel reasons of deception, coercion, and duress, all caused by the defendant's misconduct.

Ellen Gesmer, the plaintiff's attorney, considered using the delayed discovery argument, but rejected it as being problematic from the victim's point of view. Ms. Gesmer opposes the use of delayed discovery in cases brought by adult survivors of childhood sexual abuse because of a number of defects with the legal concept. For example, delayed discovery may result in prolonged litigation because the plaintiff must go through a lengthy discovery process and a hearing concerned solely with when she discovered the abuse and whether or not her discovery was reasonable. The court would then impose a nonexistent "reasonable person" standard to determine whether the plaintiff discovered the abuse at a time when a reasonable person should have known

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119 Id. at 24-25.
120 Bickel, supra note 6, at 434.
122 Id. at 713.
123 Id.
124 Id.
125 Id. at 721-22.
126 See Testimony of Ellen Gesmer, supra note 114, at 5-6. Some of the problems with using the delayed discovery rule include a lengthy and expensive discovery process, the occurrence of MPD, and the inappropriate use of an objective standard in determining the reasonableness of the discovery. Id.
127 Id. at 5.
about the abuse.  

III. RECOMMENDATIONS

New York courts have been unwilling to toll the statute of limitations on delayed discovery, estoppel, or insanity bases. All of the court decisions which dismissed the claims of childhood sexual abuse as barred by the statute of limitations have discussed the need for the state legislature to address this issue. There are three possible legislative solutions: (1) create a delayed discovery exception for childhood sexual abuse; (2) extend the statute of limitations for childhood sexual abuse; or (3) eliminate the statute of limitations for childhood sexual abuse. From a victim's perspective, the most favorable solution would be elimination of the statute of limitations altogether.

The traditional concerns underlying the statute of limitations—fairness to the defendant, prevention of stale suits, and discouraging plaintiffs from “sleeping on their rights”—are not compelling in cases of childhood sexual abuse. As described by Judge Baer in Bassile, statutes of limitation are “statutes of repose, making clear that the past is truly past and its controversies concluded.” Many believe that a time should come when a potential defendant should be able to stop worrying about an impending lawsuit and carry on with his life. However, survivors of childhood sexual abuse often are not able to carry on with their lives. Fairness dictates that the statute of limitations should not bar them from bringing their claims. The past will never pass for survivors if they are not allowed to bring their claims. When an adult survivor of childhood sexual abuse uses the infancy toll, and brings a claim during the statutory period, the evidence is already stale. Extending the time period even further would have little effect on the reliability of the evidence.

Lastly, some survivors of childhood sexual abuse “sleep on their rights” because of their inability to remember the abuse and to connect the abuse with their problems. The statute of limitations does not help plaintiffs overcome these psychological barriers and, therefore, provides little, if any, incentive to encourage plaintiffs

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128 Id.
to bring claims. A balancing of these policies requires that the New York State legislature eliminate the statute of limitations for childhood sexual abuse survivors.

**Conclusion**

It has become apparent that the law must become more flexible to address the needs of survivors of childhood sexual abuse. The New York State legislature must consider the special circumstances surrounding sexual abuse and understand that a victim cannot bring an action or even file a police report until she has realized the cause of her psychological and physical damages. Where the delay is based upon the guilt and fear instilled by the abuser, enforcement of the statute of limitations or the police report requirement is an unnecessary impediment to receiving just compensation. It also means that the abuser will not be held accountable to the victim under the law.

The injustice of barring a meritorious claim before the victim knows or understands the injury far outweighs the desire for cooperation with law enforcement or the threat of stale or fraudulent claims. By eliminating the requirement of filing a police report for CVB compensation and by eliminating or easing the statute of limitations, society may better confront one of its most horrible truths—childhood sexual abuse.