

MINNESOTA CHILD VICTIM ACT

In May of 2013, Minnesota passed the Child Victim Act, a law that changes the statutes of limitation applied to civil legal claims for survivors of childhood sexual abuse. This fact sheet will outline changes created by the legislation as well as discuss implications of the new law for survivors and advocates in Minnesota. Advocates should never give an opinion to a survivor about whether the statute of limitations applies – refer the survivor to an attorney who specializes in civil litigation.

<p>Breakdown of Civil Cases: How Civil Cases Differ from Criminal Cases</p>	<ul style="list-style-type: none"> • Civil lawsuits are brought forward by the victim or someone known to the victim (rather than the state) against an individual or an institution. • Plaintiffs/Victims are able to represent themselves or be represented by an attorney. • The burden of proof is not as high in a civil case as it is in a criminal case. There are different standards of review. • Civil cases usually have different statutes of limitation from criminal cases. • Civil cases maintain different procedural rules. • There are no “convictions” or sentences of jail time in civil cases. Case outcomes typically involve an assignment of fault and ruling of compensation for harm done. • There may be increased privacy issues in civil cases—victims do not have as many protections as they would in a criminal case. • Civil cases offer an opportunity for survivors to expose offenders and negligent institutions while also holding them accountable for injuries (both mental and physical) sustained by the survivor. This is especially important when the statute of limitations on a survivor’s criminal case may have passed. • In civil cases involving sexual abuse or sexual assault, the term “plaintiff” typically refers to the victim/survivor and the term “defendant” (or sometimes “respondent”) is usually the perpetrator or the negligent institution. • The burden of proof is on the plaintiff. The survivor must provide enough evidence, such as testimony that substantiates the abuse or documentary evidence that an institution knew about the abuse, for a case to move forward.
<p>Old Minnesota Law</p>	<ul style="list-style-type: none"> • In 1989, the Minnesota state legislature passed a progressive, victim-friendly law (Minn. Stat. § 541.073, known as the “Delayed Discovery Statute”) that allowed any victim who experienced sexual abuse as defined under Criminal Sexual Conduct (CSC) first through fourth degree six years to file a civil claim from the time the plaintiff knew or should have known that injury was caused by sexual abuse. • In 1995, the Minnesota Supreme Court essentially rewrote the Delayed Discovery Statute to mandate that childhood sexual abuse (CSA) survivors had only six years from the age of 18 to file a civil lawsuit; therefore, all CSA civil claims had to be filed before the plaintiff turned 24 years old. This new interpretation of the law assumed that survivors automatically know and understand that they are injured at

	<p>the time of abuse. This strict standard did not take into account the time it may take for a victim to fully come to terms with past abuse.</p>
<p>Why Change the Law?</p>	<ul style="list-style-type: none"> • The need to increase survivor empowerment and break the silence. • Acknowledging that many victims are not aware of or prepared to deal with the physical and emotional ramifications of their abuse before the age of 24. • After many high-profile media cases involving schools, churches and social organizations, we now have a better understanding of how institutions play a role in hiding or allowing CSA to happen.
<p>New Minnesota Law: Child Victim Act</p>	<ul style="list-style-type: none"> • Bill signed on May 24, 2013 with an enactment date of May 25, 2013. • Keeps the same statute of limitations for adult survivors: If a victim is abused at the age of 18 or older, actions for damages must be commenced within six years of the assault. • If a victim is abused before the age of 18, actions for damages may be commenced at any time. <ul style="list-style-type: none"> ○ Individuals under the age of 24 at the time of the Child Victim Act enactment (May 25, 2013) have no statute of limitations to bring their case forward. ○ <i>However, individuals older than 24 at the time of the Child Victim Act enactment (May 25, 2013) have a three-year window of opportunity from the date of enactment to bring their civil claim forward. This window period ends on May 24, 2016.</i> • Added another level of sexual abuse—fifth degree CSC. • Defines “person” who can be sued to include “a natural person, corporation, limited liability company, partnership, organization, association of other entity.” • Removed the requirement of personal injury caused by sexual assault and now includes any type of emotional or bodily injury. This change removes the heightened level of damages that the victim would have to prove. • Any case against a person who was under the age of 14 at the time of abuse can only be brought forward until the plaintiff/survivor is 24. So essentially there are stricter timeframes when the abuser is also a minor and under the age of 14. • Includes the same stipulation from the old law that parent/guardian knowledge is not imputed to a minor. • Affects two of the three main claims a plaintiff can bring forward in civil court: 1) Suing an individual for battery or sexual assault and/or 2) Suing an institution for negligence. The Child Victim Act does not affect the third main claim, vicarious liability against an institution—victims still only have until the age of 24 to file a claim for vicarious liability. Vicarious liability means that an institution may be found to have legal responsibility for the acts of another such as liability of an employer for the acts of an employee (i.e. a school responsible for the behavior of a teacher toward a student).
<p>Implications for Survivors and Advocates</p>	<ul style="list-style-type: none"> • Many survivors who previously could not file a civil claim regarding their CSA now have a three-year window period to seek civil justice. It is important for advocates to raise awareness regarding this three-year window and to let survivors know their new options, especially in light of the new time frame. • Advocates working with survivors who wish to file a civil claim should incorporate civil attorneys with expertise in this area to determine whether a cause of action is

possible. MNCASA can help refer advocates and/or survivors to appropriate attorneys across the state.

- Keep timing issues with criminal legal matters in mind—filing a civil claim simultaneously with a criminal case might be used against the victim in the criminal case. This is a matter for discussion with both a prosecutor and a civil attorney.
- If a case does not prevail in the criminal justice system the survivor can still seek recourse in the civil system so long as the statute of limitations allows it – remember the burden of proof is lower. An attorney can advise the survivor about likelihood of success in civil litigation.
- Even if an attorney turns down a case, try to empower the survivor by affirming how much courage it takes to even contemplate engaging in this process.
- Encourage survivors to report their crime to law enforcement if they so desire. Criminal statutes of limitation have had many changes as well and reporting might prove empowering for the survivor. But even if the criminal statute of limitations has run, the survivor’s report may be helpful to law enforcement when investigating related cases.
- If a survivor does choose to engage with the civil legal system, ensure that safety and support are emphasized. Make sure the survivor is safe, has a safety plan, and has a network of social support.
- Remember that there is no rape shield in civil cases, meaning that the survivor has increased privacy risks. Inform the survivor of risks involving identity and disclosure from the beginning and take the appropriate steps to prepare for these potential privacy breaches. Attorneys have certain methods of protection they might be able to enact to protect private information, but privacy and anonymity risks remain.
- Defendants will look for ways to undermine the credibility of the survivor, minimize the abuse experienced, and/or establish that the abuse did not occur. Advocates should talk through these potential arguments with survivors in an effort to better prepare the survivor for what might come up in the trial process.
- Survivors should consider what they hope to gain from engaging in the civil legal process. A defendant may not always have financial resources to make a survivor “whole” with regard to injury but other results may be just as satisfying such as legal recognition of the harm done, validation of the survivor’s claims and notice of the defendant’s actions to the community.
- Advocates should have counseling resources and referrals readily available, as the civil claim process might be re-traumatizing for the survivor.
- Reach out to MNCASA for assistance finding an attorney who specializes in civil sexual assault claims, for additional resources surrounding this topic, and if you have additional questions regarding the Child Victim Act.

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January 2014