IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; MARIBEL MCADORY; JEFFREY GRANGER; and PAMELA NORTON-LINDEMUTH,

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK – THE HONORABLE MARK DENTON, DISTRICT JUDGE,

Respondent,

And,

J.D., an individual,

Real-Party-In-Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO. 84569

DISTRICT COURT CASE NO.

A-22-853154-C

APPENDIX TO PETITIONERS' MOTION TO STAY DISTRICT COURT PROCEEDINGS

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APPENDIX TO PETITIONERS' MOTION TO STAY DISTRICT COURT PROCEEDINGS

NUMBER	DOCUMENT	BATES NUMBER
1	Complaint filed May 25, 2022	MTS 0001-0019
2	Motion to Dismiss Plaintiff's Complaint as to Plaintiff J.D., and as to Plaintiff's Constitutional Claims pursuant to NRCP 12(b)(5), filed June 28, 2022	MTS 0020-0029
3	Opposition to Defendants' Motion to Dismiss Plaintiffs' Complaint, filed July 12, 2022	MTS 0030-0044
4	Defendants' Reply to Plaintiffs' Opposition to Motion to Dismiss (with exhibits), filed July 27, 2022	MTS 0045-0152
5	Notice of Hearing, August 4, 2022	MTS 0153
6	Order Denying in Part and Granting in Part Defendants' Motion to Dismiss Plaintiffs' Complaint as to Plaintiff J.D., and as to Plaintiffs' Constitutional Claims Pursuant to NRCP 12(b)(5), filed August 15, 2022, and Notice of Entry, filed August 16, 2022	MTS 0154-0165
7	Transcript of Hearing, August 4, 2022 - Motion to Dismiss Plaintiff's Complaint as to Plaintiff J.D., and as to Plaintiff's Constitutional Claims pursuant to NRCP 12(b)(5)	MTS 0166-0179
8	Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus, filed October 3, 2022	MTS 0180-0188
9	Plaintiff's Opposition to Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus, filed October 7, 2022	MTS 0189-0198

10	Transcript of Hearing October 10, 2022 – Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus	MTS 0199-0203
11	Order Granting Temporary Stay of Proceedings Re: Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus, filed October 10, 2022, with Notice of Entry filed October 11, 2022.	MTS 0204-0217

DATED this 11th day of October, 2022.

OLSON CANNON GORMLEY & STOBERSKI

/s/ *Stephanie A. Barker*

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of October 2022, I served a true and correct copy of the above and foregoing APPENDIX TO PETITIONERS MOTION TO STAY DISTRICT COURT PROCEEDINGS by electronic service through the Nevada Supreme Court's website, (or, if necessary, via e-mail or by U.S. Mail, first class, postage pre-paid), upon the following:

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5/25/2022 3:25 PM
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CASE NO: A-22-853154-C
Department 13

DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual. Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, and individual; DOE STUDENT 3, and individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive. Defendants.	CASE NO.: DEPT NO.: **COMPLAINT**

Plaintiffs, B.D., a minor by and through his natural mother and parent, J.D, and J.D., an individual,[1] (hereinafter "Plaintiffs"), by and through their counsel, Christian M. Morris, Esq.,

[1] Plaintiffs' names have been kept confidential pursuant to NRS 200.3771.

Case Number: A-22-853154-C

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Alexandra B. McLeod, Esq., and Kimberly A. Nelson, Esq., of **NETTLES | MORRIS**, as and for the causes of action against Defendants above named, and each of them, hereby complains and alleges as follows:

PARTIES

1. Plaintiff, B.D. was, and at all times relevant hereto, an individual residing in the State of Nevada, County of Clark.

2. Plaintiff, J.D. was, and at all times relevant hereto, an individual residing in the State of Nevada, County of Clark.

3. Upon information and belief, Defendant CLARK COUNTY SCHOOL DISTRICT (hereinafter "CCSD") is, and at all times relevant hereto, was a political subdivision of the state of Nevada.

4. Upon information and belief, Defendant DOE TEACHER (hereinafter "Defendant Teacher") is, and at all times relevant hereto, was an individual residing in the State of Nevada, County of Clark and an employee of CCSD at William V. Wright Elementary School.

5. Upon information and belief, Defendant MARIBEL MCADORY (hereinafter "Defendant McAdory") is, and at all times relevant hereto, was an individual residing in the State of Nevada, County of Clark and an employee of CCSD, holding the position of Principal at William V. Wright Elementary School.

6. Upon information and belief, Defendant JEFFREY GRANGER, (hereinafter "Defendant Granger") is, and at all times relevant hereto, was an individual residing in the State of Nevada, County of Clark and an employee of CCSD, holding the position of Assistant Principal at William V. Wright Elementary School.

7. Upon information and belief, Defendant PAMELA NORTON-LINDEMUTH, (hereinafter "Defendant Norton-Lindemuth") is, and at all times relevant hereto, was an individual residing in the State of Nevada, County of Clark and an employee of CCSD, holding the position of Assistant Principal at William V. Wright Elementary School.

8. Upon information and belief, at all times relevant hereto, Defendants DOES 1 through 10 are or were officials, supervisors, administrators and/or in a supervisory or management

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position at CCSD and/or William V. Wright Elementary School who had authority to address the harassment, discrimination, abuse and/or molestation alleged herein and, moreover, had authority to institute corrective measures on CCSD's behalf. At all times relevant hereto, DOES 1 through 10 were residents of the County of Clark, State of Nevada, employees of CCSD, and acting within the course and scope of employment with CCSD.

9. The true names and capacities, whether individual, corporate, associate, governmental or otherwise, of Defendants DOES 1 through 10 and ROE CORPORATIONS 11 through 20 ("Does/Roe"), inclusive, are unknown to Plaintiffs at this time, who therefore sues said Defendants by such fictitious names. Plaintiffs are informed, believe and based thereon alleges that each of the defendants designated herein as a Does/Roe is negligently responsible in some manner for the events and happenings herein referred to and negligently caused injuries and damages proximately thereby to Plaintiffs as herein alleged. Plaintiffs will ask leave of Court to amend this Complaint to insert the true names and capacities of Does/Roe defendants, when the same has been ascertained by Plaintiffs, together with appropriate charging allegations, and to join such defendants in this action.

10. Upon information and belief, at all times relevant hereto, Does/Roe were involved in the initiation, approval, support or execution of the wrongful acts upon which this litigation is premised, or of similar actions against the Plaintiffs of which the Plaintiffs are presently unaware. Each of the Defendants acted as the agent, servant, representative, employee, contractor, partner, and/or joint venturer of certain other Defendants, and at all said times relevant hereto were acting in the full course and scope of said agency, service, representation, employment, contract, partnership, and/or joint venture.

JURISDICTION

11. The Eighth Judicial District Court has jurisdiction over this action pursuant to Art. VI § 6 of the Nevada Constitution, NRCP 8(a)(4), NRS 13.040, NRS 41.031 and NRS 41.130 as the occurrences giving rise to this case took place in Clark County, Nevada and the amount in controversy exceeds $15,000.00.

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GENERAL ALLEGATIONS

12. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

13. At all times relevant hereto, Plaintiff J.D. (hereinafter "Plaintiff J.D."), was and is, the natural mother and parent of B.D., a minor.

14. At all times relevant hereto, Plaintiff B.D. (hereinafter "Plaintiff B.D."), was a student at William V. Wright Elementary School, which was located in Clark County, Nevada, and was part of CCSD.

15. At all times relevant hereto, William V. Wright Elementary School (hereinafter "Wright Elementary") is and was a public school in Clark County, Nevada, within the Clark County School District, under the meaning of NRS 385.007(7).

16. Upon information and belief, at all times relevant hereto, Defendant Teacher was employed as a teacher at Wright Elementary.

17. Upon information and belief, at all times relevant hereto, Defendant McAdory was employed as the Principal at Wright Elementary.

18. Upon information and belief, at all times relevant hereto, Defendant Granger was employed as the Assistant Principal at Wright Elementary.

19. Upon information and belief, at all times relevant hereto, Defendant Norton-Lindemuth was employed as the Assistant Principal at Wright Elementary.

20. Upon information and belief, at all times relevant hereto, Defendant Teacher was unfit to properly supervise students placed in Defendant Teacher's classroom.

21. On or about August 2016, when Plaintiff B.D. was approximately five years old, Plaintiff was attending Wright Elementary as a student while under the care, control, and supervision of Defendants, and/or their employees, agents, contractors, teachers, supervisors, adult leaders, volunteers, and/or similar positions, and each of them.

22. Upon information and belief, from August 2016 through November 2016, Plaintiff B.D. was placed into Defendant Teacher's class.

23. Upon information and belief, from August 2016 through November 2016, Plaintiff

B.D. was placed into Defendant Teacher's class with Doe Student 1, Doe Student 2, and Doe Student 3.

24. Upon information and belief, from August 2016 through November 2016, Doe Student 1, Doe Student 2, Doe Student 3, and Plaintiff B.D., together, frequented a restroom separated from the classroom without any supervision.

25. On or about August 29, 2016, through November 10, 2016, Doe Student 1, Doe Student 2, and/or Doe Student 3 repeatedly performed fellatio on Plaintiff B.D., in the unsupervised restroom.

26. On or about August 29, 2016, through November 10, 2016, Doe Student 1, Doe Student 2, and/or Doe Student 3 repeatedly licked Plaintiff B.D. anally, in the unsupervised restroom.

27. On or about August 29, 2016, through November 10, 2016, Doe Student 1, Doe Student 2, and/or Doe Student 3 repeatedly penetrated Plaintiff B.D.'s anus by inserting his penis, in the unsupervised restroom.

28. On or about August 29, 2016, through November 10, 2016, Doe Student 1, Doe Student 2, and/or Doe Student 3 repeatedly and inappropriately touched Plaintiff B.D.'s genitals in the unsupervised restroom.

29. Upon information and belief, on or about November 10, 2016, a substitute teacher reported the inappropriate, unwanted, and unwelcome sexual abuse of Plaintiff B.D. to Plaintiff B.D.'s parents.

30. Upon information and belief, on or about November 10, 2016, Plaintiff J.D. reported the inappropriate, unwanted, and unwelcome sexual abuse of Plaintiff B.D. to the Las Vegas Metropolitan Police Department, which conducted an investigation.

31. Upon information and belief, Doe Student 1 engaged in additional inappropriate, unwelcome, and/or nonconsensual sexually explicit conduct with and toward other students, including but not limited to Plaintiff B.D.

32. Upon information and belief, Defendants, and each of them, knew that Doe Student 1, Doe Student 2, and/or Doe Student 3 exhibited highly inappropriate behavior.

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33. Upon information and belief, Defendants, and each of them, took no action to stop or prevent the inappropriate, unwanted, and unwelcome sexual conduct of Doe Student 1, Doe Student 2, and/or Doe Student 3 toward Plaintiff B.D., which enabled said conduct to continue to occur for a period of approximately three months, from August through November 2016.

34. That the conduct of Doe Student 1, Doe Student 2, and/or Doe Student 3 as alleged herein occurred during and within the scope of Doe Teacher's duties, agency, contract, volunteering, and/or employment with Defendants, and each of them.

35. The conduct, actions, omissions, and breaches of Defendants, and each of them, their employees, agents and/or contactors, occurred during and within the scope of their public duties and/or employment with CCSD.

36. As a direct, proximate, and legal cause of Defendants' conduct, and each of them, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

37. As a direct, proximate, and legal cause of Defendants' conduct, and each of them, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

38. As a direct, proximate, and legal cause of Defendants' conduct, and each of them, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

39. As a direct, proximate, and legal cause of Defendants' conduct, and each of them, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

FIRST CAUSE OF ACTION

(Negligence against Defendant CCSD)

40. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

41. At all times relevant hereto, Defendant CCSD owed a duty of care to Plaintiffs, and to all Wright Elementary students to maintain the premises in a safe and secure fashion so Plaintiff B.D. and other students would not be subjected to physical and emotional injuries from perils known or unknown.

42. At all times relevant hereto Defendant CCSD knew, and reasonably foreseeably should had known, that Doe Student 1, Doe Student 2, and/or Doe Student 3 exhibited inappropriate behavior, including but not limited to, sexually explicit and/or inappropriate behavior.

43. Based on CCSD's knowledge of Doe Student 1's, Doe Student 2's, and/or Doe Student 3's inappropriate behavior it was reasonably and legally foreseeable that the acts as alleged herein would occur.

44. Defendant CCSD breached its duty of care when it negligently and/or carelessly operated, managed, controlled, and maintained CCSD schools, including but not limited to Wright Elementary, and allowed Doe Student 1, Doe Student 2, and/or Doe Student 3 unsupervised access to the separately located restroom, which enabled Doe Student 1, Doe Student 2, and/or Doe Student 3 to harass, abuse, molest, and engage in unwelcome and/or nonconsensual sexual conduct with Plaintiff B.D., thereby directly, legally, and proximately causing injuries and damages to Plaintiffs as alleged herein.

45. Defendant CCSD breached its duty of care when it intentionally and knowingly assigned Doe Student 1, Doe Student 2, Doe Student 3, and Plaintiff B.D. to an unfit Defendant Teacher's classroom.

46. Defendant CCSD and its employees/agents, representatives and/or contractors breached their duty to keep Plaintiff B.D. safe from harm by creating a condition that resulted in serious injury to Plaintiffs.

47. Defendant CCSD knew, or in the exercise of reasonable care, should have known that Doe Student 1's, Doe Student 2's, and/or Doe Student 3's unwelcome and/or nonconsensual sexual conduct with Plaintiff B.D. was egregious, constituting a danger to Plaintiff B.D. and other students, and CCSD carelessly and negligently failed to take reasonable precautions to prevent the

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unwelcome and/or nonconsensual sexual conduct with students, including Plaintiff B.D., as alleged herein.

48. At all times relevant hereto, Defendant Teacher was employed by CCSD and pursuant to NRS 41.130 and the doctrine of *respondeat superior*, CCSD is liable to Plaintiffs for the injuries and damages caused by the wrongful acts, as alleged herein.

49. As a direct, proximate, and legal cause of Defendant CCSD's conduct, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

50. As a direct, proximate, and legal cause of Defendant CCSD's conduct, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

51. As a direct, proximate, and legal cause of Defendant CCSD's conduct, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

52. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiff has been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

SECOND CAUSE OF ACTION

(Negligence against Defendant Teacher)

53. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

54. At all times relevant hereto, upon information and belief, Defendant Teacher was employed at Wright Elementary.

55. Pursuant to NRS 432B.220 a person employed by a public school and any person who serves as a volunteer at such a school, and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall

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report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

56. Pursuant to NRS 432B.220, Defendant Teacher owed a duty of care to Plaintiff B.D. and other students similarly situated, to report Doe Student 1's, Doe Student 2's, and/or Doe Student 3's conducts, including but not limited to the unwelcome and/or nonconsensual sexual conduct, as alleged herein.

57. Pursuant to the doctrine of *in loco parentis* and NRS 289.190 Defendant Teacher owed Plaintiff a duty legal under Nevada law to protect students such as Plaintiff B.D., in school and on the way to and from school, including but not limited to the duties to anticipate foreseeable dangers to students and take steps to minimize those dangers; supervise students; ensure student safety; and obey all laws, including those respecting minor children.

58. At all times relevant hereto Defendant Teacher knew, or had reasonable cause to believe, that Doe Student 1, Doe Student 2, and/or Doe Student 3 exhibited inappropriate behavior in the classroom, including but not limited to Plaintiff B.D., and exhibited sexually explicit and/or inappropriate behavior and unwelcome and/or nonconsensual sexual conduct toward students, including Plaintiff B.D..

59. Defendant Teacher breached the aforementioned duties of care owed to Plaintiff B.D., and other students similarly situated, by failing to report Doe Student 1's, Doe Student 2's, and/or Doe Student 3's conduct as alleged herein.

60. Defendant Teacher breached his or her duty to Plaintiff B.D. by creating a condition that resulted in serious injury to Plaintiffs, as alleged herein.

61. Defendant Teacher breached the aforementioned duties of care owed to Plaintiff B.D., and other students similarly situated, by failing to properly supervise and/or check on his or her students while they attended a separately located restroom.

62. Defendant Teacher, knew or in the exercise of reasonable care, should have known that the unwelcome and/or nonconsensual sexual conduct with students was egregious,

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constituting a danger to Plaintiff B.D. and other students, and Defendant Teacher carelessly and negligently failed to take reasonable precautions to prevent said unwelcome and/or nonconsensual sexual conduct with Plaintiff B.D. as alleged herein.

63. At all times relevant hereto, Defendant Teacher was employed by CCSD and pursuant to NRS 41.130 and the doctrine of *respondeat superior*, CCSD is liable to Plaintiff for the injuries and damages caused by Defendant Teacher's wrongful acts, as alleged herein.

64. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

65. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

66. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

67. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

THIRD CAUSE OF ACTION

(Negligence against Defendant McAdory)

68. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

69. At all times relevant hereto, upon information and belief, Defendant McAdory was employed at Wright Elementary.

70. Pursuant to NRS 432B.220 a person employed by a public school and any person who serves as a volunteer at such a school, and who, in his or her professional or occupational

capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

71. Pursuant to NRS 432B.220, Defendant McAdory owed a duty of care to Plaintiff B.D. and other students similarly situated, to report conduct, including but not limited to, the unwelcome and/or nonconsensual sexual conduct, as alleged herein.

72. Pursuant to the doctrine of *in loco parentis* and NRS 289.190 Defendant McAdory owed Plaintiffs a duty legal under Nevada law to protect students such as Plaintiff B.D., in school and on the way to and from school, including but not limited to the duties to anticipate foreseeable dangers to students and take steps to minimize those dangers; supervise students; ensure student safety; and obey all laws, including those respecting minor children.

73. At all times relevant hereto, Defendant McAdory knew, or had reasonable cause to believe, that Doe Student 1, Doe Student 2, and/or Doe Student 3 exhibited inappropriate behavior toward other students, including but not limited to Plaintiff B.D., and exhibited sexually explicit and/or inappropriate behavior and unwelcome and/or nonconsensual sexual conduct toward other students, including Plaintiff B.D.

74. Upon information and belief, at all times relevant hereto, when contacted by Clark County School District Police about said conduct towards Plaintiff B.D., as alleged herein, Defendant McAdory stated that "once before they had a nonrelated similar incident at Wright Elementary."

75. Defendant McAdory breached the aforementioned duties of care owed to Plaintiff B.D., and other students similarly situated, by failing to report said conduct as alleged herein, as well as similar conduct to other students.

76. Defendant McAdory breached her duty to Plaintiffs by creating a condition that resulted in serious injury to Plaintiff when she assigned Plaintiff to Defendant Teacher's classroom as alleged herein.

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77. Defendant McAdory, knew or in the exercise of reasonable care, should have known that said unwelcome and/or nonconsensual sexual conduct with students was egregious, constituting a danger to Plaintiff B.D. and other students, and Defendant McAdory carelessly and negligently failed to take reasonable precautions to prevent unwelcome and/or nonconsensual sexual conduct with Plaintiff B.D. as alleged herein.

78. At all times relevant hereto, Defendant McAdory was employed by CCSD and pursuant to NRS 41.130 and the doctrine of *respondeat superior*, CCSD is liable to Plaintiffs for the injuries and damages caused by Defendant McAdory's wrongful acts, as alleged herein.

79. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

80. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

81. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

82. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

FOURTH CAUSE OF ACTION

(Negligence against Defendant Granger and Defendant Norton)

83. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

84. At all times relevant hereto, upon information and belief, Defendant Grander and Defendant Norton were employed at Wright Elementary.

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85. Pursuant to NRS 432B.220 a person employed by a public school and any person who serves as a volunteer at such a school, and who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected shall report the abuse or neglect of the child to an agency which provides child welfare services or to a law enforcement agency; and make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the child has been abused or neglected.

86. Pursuant to NRS 432B.220, Defendant Grander and Defendant Norton owed a duty of care to Plaintiff B.D. and other students similarly situated, to report conduct, including but not limited to, the unwelcome and/or nonconsensual sexual conduct, as alleged herein.

87. Pursuant to the doctrine of *in loco parentis* and NRS 289.190 Defendant Grander and Defendant Norton owed Plaintiffs a duty legal under Nevada law to protect students such as Plaintiff B.D., in school and on the way to and from school, including but not limited to the duties to anticipate foreseeable dangers to students and take steps to minimize those dangers; supervise students; ensure student safety; and obey all laws, including those respecting minor children.

88. At all times relevant hereto, Defendant Grander and Defendant Norton knew, or had reasonable cause to believe, that Doe Student 1, Doe Student 2, and/or Doe Student 3 exhibited inappropriate behavior toward other students, including but not limited to Plaintiff B.D., and exhibited sexually explicit and/or inappropriate behavior and unwelcome and/or nonconsensual sexual conduct toward other students, including Plaintiff B.D.

89. Defendant Grander and Defendant Norton breached the aforementioned duties of care owed to Plaintiff B.D., and other students similarly situated, by failing to report said conduct as alleged herein, as well as similar conduct to other students.

90. Defendant Grander and Defendant Norton breached their duty to Plaintiffs by creating a condition that resulted in serious injury to Plaintiff when she assigned Plaintiff to Defendant Teacher's classroom as alleged herein.

91. Defendant Grander and Defendant Norton, knew or in the exercise of reasonable care, should have known that said unwelcome and/or nonconsensual sexual conduct with students

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was egregious, constituting a danger to Plaintiff B.D. and other students, and Defendant Grander and Defendant Norton carelessly and negligently failed to take reasonable precautions to prevent unwelcome and/or nonconsensual sexual conduct with Plaintiff B.D. as alleged herein.

92. At all times relevant hereto, Defendant Grander and Defendant Norton were employed by CCSD and pursuant to NRS 41.130 and the doctrine of *respondeat superior*, CCSD is liable to Plaintiffs for the injuries and damages caused by Defendant Grander's and Defendant Norton's wrongful acts, as alleged herein.

93. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

94. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

95. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

96. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

FIFTH CAUSE OF ACTION

(Negligent Hiring, Training, Supervision and Retention against Defendant CCSD)

97. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

98. At all times relevant hereto, Defendant CCSD was responsible for the hiring, training, supervision, retention, and control of CCSD employees, including but not limited to, Defendant Teacher.

99. Defendant CCSD owed a non-delegable duty to Clark County School District students, including but not limited to Plaintiff B.D., to exercise due care in their dealings through its selection, training, supervision, oversight, direction, retention and control of Defendant CCSD's employees, agents, contractors, and/or volunteers.

100. Defendant CCSD breached its duty by hiring, failing to supervise, failing to train, and retaining Defendant Teacher even though CCSD knew, or reasonably should have known Defendant Teacher was unfit to supervise her students.

101. Defendant CCSD breached its duty by failing to adequately train CCSD employees, agents, contractors, volunteers, and/or personnel, to recognize, evaluate, and report potential or actual child harassers and abusers and/or unwelcome and/or nonconsensual sexual conduct by other students.

102. Defendant CCSD breached its duty by failing to use reasonable care to protect students, including but not limited to Plaintiff B.D. and other students, from sexual abuse, harassment, molestation, and/or unwelcome, and/or nonconsensual sexual conduct other students.

103. As a direct, proximate, and legal cause of Defendants' aforementioned breaches, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

104. As a direct, proximate, and legal cause of Defendants' aforementioned breaches, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

105. As a direct, proximate, and legal cause of Defendants' aforementioned breaches, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

106. As a direct, proximate, and legal cause of Defendants' breach, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

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SIXTH CAUSE OF ACTION

(Violation of the Constitution of the State of Nevada against Defendant CCSD)

107. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

108. At all times relevant hereto, Defendant CCSD was a political subdivision of the State of Nevada within the meaning of NRS 354.474.

109. Nev. Const. art. XI, § 2 allowed for the establishment of a uniform system of common schools, of which Defendant CCSD and Wright Elementary are members/participants.

110. Nev. Const. art. XI, § 5 states that teachers in said Schools of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteenth of the Constitution of the State of Nevada.

111. That the oath prescribed in Nev. Const. art. XV, § 2 states, *inter alia*, that teachers, among others, shall support, protect, and defend the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, bear true faith, allegiance, and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and will well and faithfully perform all the duties of the office of which one is about to enter.

112. The State of Nevada and its political subdivisions have waived their immunity from liability and consented to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations.

113. The laws of the State of Nevada allow for action for injury, wrongful death or other damage resulting from the deprivation of any rights, privileges, or immunities secured by the Constitution of the State of Nevada.

114. Nev. Const. art. I, § 8(2) states that no person shall be deprived of life, liberty, or property, without due process of law.

115. The Due Process Clauses of the Nevada Constitutions protects individuals from state actions that deprive them of life, liberty, or property without due process of law.[2].

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[2] See also *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 133 Nev. 28, 30, 388 P.3d 970, 972 (2017).

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116. At all times relevant hereto, Defendant CCSD, and by and through its employees, agents, contractors, and/or volunteers, violated the Constitution of the State of Nevada by causing Plaintiffs to be deprived of the rights, privileges, and/or immunities secured in the Constitution of the State of Nevada, as alleged herein, and by failing to adhere their oath of office.

117. At all times relevant hereto, Defendants were employed by CCSD and pursuant to the doctrine of *respondeat superior*, CCSD is liable to Plaintiffs for the injuries and damages caused by Defendants' wrongful acts, as alleged herein.

118. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

119. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been limited in certain occupational, educational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

120. As a direct, proximate, and legal cause of Defendant's conduct, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

121. As a direct, proximate, and legal cause of Defendants' conduct, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

SEVENTH CAUSE OF ACTION

(Negligent Infliction of Emotional Distress against Defendant CCSD)

122. Plaintiffs repeat and reallege each and every allegation contained in the preceding paragraphs and incorporate the same herein by reference as though fully set forth herein.

123. The actions Defendants as described herein constitute negligent infliction of emotional distress, emotionally impacting Plaintiffs and causing Plaintiffs to suffer shock and serious emotional distress as a direct and proximate result thereof.

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124. The actions of Defendants as described herein, were committed within the course and scope of their employment with CCSD and pursuant to NRS 41.130 and the doctrine of *respondeat superior*, CCSD is liable to Plaintiffs for the injuries and damages caused by Defendants' wrongful acts, as alleged herein.

125. As a result of the negligent infliction of emotional distress as described herein, Plaintiff has suffered injuries and damages including, but not limited to, severe emotional distress, psychological trauma, and anxiety.

126. As a direct, proximate, and legal cause of the negligent infliction of emotional distress as described herein, Plaintiffs have been limited in certain occupational, recreational, and recreational activities, which have caused, and shall continue to cause, loss of earning capacity, lost wages, and loss of enjoyment of life all to Plaintiffs' damage in an amount in excess of $15,000.00.

127. As a direct, proximate, and legal cause of the negligent infliction of emotional distress as described herein, Plaintiffs received medical, psychological, and other treatments for injuries all or some of which conditions may be permanent and disabling and, all to Plaintiffs' damage in a sum in excess of $15,000.00. That said services, care, and treatment are continuing and shall continue in the future.

128. As a direct, proximate, and legal cause of the negligent infliction of emotional distress as described herein, Plaintiffs have been required to retain the service of **NETTLES | MORRIS** to prosecute this action and are entitled to recovery reasonable attorney's fees and costs incurred herein.

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. . .

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For general damages in excess of $15,000.00;
2. For special damages in excess of $15,000.00;
3. For past, present, and future medical expenses in a sum to be determined at trial;
4. For general damages for pain, suffering, mental distress, anguish, and fear, to be determined at trial;
5. For any and all pre- and post-judgment interest as permitted by law;
6. For reasonable attorney's fees and costs of suit; and
7. For such other and further relief as the court deems just and proper.

DATED this 25th day of May, 2022.

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

NOTICE OF INTENT TO APPEAR IN PERSON

HEARING REQUESTED

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D. AND PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5)

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Case Number: A-22-853154-C

COME NOW Defendants CLARK COUNTY SCHOOL DISTRICT (CCSD), a political subdivision of the State of Nevada, MARIBEL McADORY, an individual, JEFFREY GRANGER, an individual, and PAMELA NORTON-LINDEMUTH, an individual, (hereinafter collectively the "CCSD Defendants") through their attorneys, JAMES R. OLSON, ESQ., WALTER R. CANNON, ESQ., and STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and pursuant to NRCP 12(b)(5), hereby move to dismiss portions of Plaintiffs' Complaint for failure to state a claim upon which relief can be granted.

This motion is made and based on the pleadings and papers on file herein, the following points and authorities, and the arguments of counsel as the Court may entertain at the time of hearing.

POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs' Complaint alleges that on or about and between August 29, 2016, and November 10, 2016, the minor Plaintiff B.D., who was then a five year-old Kindergarten student in a CCSD school, was sexually molested by other un-named Kindergarten boys while in the boys restroom. Plaintiffs are identified as being B.D., the minor child, and J.D., the minor's parent/mother.

These moving Defendants are CCSD and three of its employee administrators at the elementary school where the events are alleged to have occurred, namely Defendant Maribel McAdory, Principal, Defendant Jeffrey Granger, Assistant Principal, and Defendant Pamela Norton-Lindemuth, Assistant Principal (hereinafter collectively referred to as the "CCSD Defendants"). The remaining defendants are identified as Does and Roes.

Plaintiffs' Complaint sets forth seven state law causes of action against the CCSD Defendants: (1) Negligence against Defendant CCSD; (2) Negligence against Defendant [DOE] Teacher; (3) Negligence against Defendant McAdory; (4) Negligence against Defendant Granger and Defendant Norton-Lindemuth; (5) Negligent Hiring Training, Supervision, and Retention against Defendant CCSD; (6) Violation of the Constitution of the State of Nevada against

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Defendant CCSD; and (7) Negligent Infliction of Emotional Distress against Defendant CCSD. As pled, all causes of action are asserted on behalf of and seek damages for both Plaintiffs – the minor child and his parent/mother.[1]

This motion first seeks dismissal of all claims by Plaintiff J.D., the minor's adult parent, as beyond the statute of limitations, and second, seeks dismissal of the Sixth Cause of Action for violation of the Nevada Constitution, as to both Plaintiffs as it fails to state a claim upon which relief can be granted.

II.

ARGUMENT

A. Legal Standard for Granting a Motion to Dismiss – NRCP 12(b)(5)

In lieu of filing a responsive pleading to a Complaint, Nevada Rule of Civil Procedure (NRCP) 12(b)(5) permits a defendant to file a Motion to Dismiss for failure to state a claim upon which relief may be granted. A Motion to Dismiss under the rule should be granted where it "appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (quoting *Simpson v. Mars Inc*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997)). Every fair inference must be drawn in favor of the plaintiff. *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839 (2000).

On review, the appellate court "must construe the pleadings liberally and accept all factual allegations in the complaint as true." *Blackjack Bonding* at 1213, 14 P.3d at 1278. The court's "task is to determine whether . . . the challenged pleading sets forth allegations sufficient to make

---

[1] *See* Plaintiffs' Complaint as follows:
"... proximately caused injuries and damages to Plaintiffs ..." (¶ 44 [1st CoA].)
"...resulted in serious injury to Plaintiffs ..." (¶¶ 46 [1st CoA], 60 [2nd CoA].)
"... is liable to Plaintiffs..." (¶¶ 48 [1st CoA], 78 [3rd CoA], 92 [4th CoA], 117 [6th CoA], 124 [7th CoA].)
"...Plaintiffs have suffered injuries and damages ..." (¶¶ 49 [1st CoA], 64 [2nd CoA], 79 [3rd CoA], 93 [4th CoA], 103 [5th CoA], 118 [6th CoA], 125 [7th CoA].)
"... Plaintiffs have been limited in certain [activities]..." (¶¶ 50 [1st CoA], 65 [2nd CoA], 80 [3rd CoA], 94 [4th CoA], 104 [5th CoA], 119 [6th CoA], 126 [7th CoA].)
"... Plaintiffs received ... treatments for injuries ..." (¶¶ 51 [1st CoA], 66 [2nd CoA], 81 [3rd CoA], 95 [4th CoA], 105 [5th CoA], 120 [6th CoA], 127 [7th CoA].)
"... Plaintiffs have been deprived of rights and privileges ..." (¶¶ 116 [6th CoA], 128 [7th CoA].)

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out the elements of a right to relief." *Vacation Village, Inc. v. Hitachi American, Ltd.*, 110 Nev. 481, 874 P.2d 744 (1994) [emphasis added], (quoting *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985)).

The purpose of the rule providing for dismissal of a Complaint on the basis that it does not state a claim upon which relief can be granted is to allow a court to eliminate actions that are *fatally flawed in their legal premises and destined to fail,* and thus to spare litigants the burdens of unnecessary pretrial and trial activity. *Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys., Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6), the federal analogue to Nev. R. Civ. P. 12(b)(5)). Stated differently, the purpose of a motion to dismiss for failure to state a claim is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief, even if everything alleged in the complaint is true. *Mayer v. Mylod,* 988 F.2d 65, 638 (6th Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6)).

Further, a court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations. *Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 847 P.2d 720, 720 (1993). Indeed, when the defense of the statute of limitations appears from the Complaint itself, a motion to dismiss is proper. *Manville v. Manville*, 79 Nev. 487, 387 P.2d 661 (1963) (overruled on other grounds as recognized in *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 651, 218 P.3d 853, 857 (2009).

Here, accepting as true the allegations of Plaintiff's Complaint against the CCSD Defendants, Plaintiffs' action must be dismissed, in part, because it is legally deficient. All causes of action in Plaintiffs' Complaint on behalf of Plaintiff J.D. are untimely and barred by the statute of limitations; and Plaintiff's Sixth Cause of Action asserting Nevada Constitutional violations must be dismissed as to both Plaintiffs for its failure to state a claim upon which relief can be granted.

B. <u>Having waited Over Five Years to File Suit, Plaintiff J.D.'s Claims are Barred by the Statute of Limitations.</u>

Plaintiffs' Complaint, filed May 25, 2022, alleges at Paragraph 13: "At all times relevant hereto, Plaintiff J.D. (hereinafter "Plaintiff J.D."), was and is, the natural mother and parent of

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B.D., a minor." The Complaint further alleges that the events in question – the "improper conduct" – occurred between August 2016, and November 10, 2016. *See* Complaint ¶¶ 21-28. As alleged, the "improper conduct" was made known to Plaintiff J.D. on November 10, 2016. *See* Complaint ¶29. Suit was not filed on J.D.'s behalf until May 25, 2022. *See* file-stamped Complaint. Taking the allegations of the Complaint as true, Plaintiff J.D. knew of the events giving rise to this Complaint *five and one-half years before* the Complaint was filed on May 25, 2022.

The statute of limitations in Nevada as to all claims by J.D., is two years from the date the cause of action accrued.

> **NRS 11.010 Commencement of civil actions.** Civil actions can only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute.
>
> **NRS 11.190 Periods of limitation.** Except as otherwise provided in NRS 40.4639 [junior real estate mortgages after foreclosure], 125B.050 [obligation of support] and 217.007 [victim's right to proceeds of material based on crime], actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:
>
> . . .
>
> 4. Within 2 years:
>
> . . .
>
> (e) Except as otherwise provided in NRS 11.215 [victim action for sexual abuse damages against perpetrator],[2] an action to recover damages for injuries to a person ... caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.
>
> . . .

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[2] NRS 11.215 applies to an action by a sexual assault victim, against a perpetrator of the assault, as follows:

> **NRS 11.215 Actions for damages for injury arising from sexual abuse or sexual exploitation of minor; actions involving injury arising from appearance of minor in pornography.**
>
> 1. An action to recover damages for an injury to a person arising from the sexual abuse or sexual exploitation of the plaintiff which occurred when the plaintiff was less than 18 years of age may be commenced against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff at any time after the sexual abuse or sexual exploitation occurred. . . .
>
> . . .
>
> 4. As used in this section:
>
> (a) "Sexual abuse" has the meaning ascribed to it in NRS 432B.100.

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As to B.D., the minor Plaintiff, the statute of limitations is tolled by NRS 11.250 and does not begin to run until B.D. reaches the age of 18.

> **NRS 11.250 Disabilities preventing running of statute.** If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, either:
>
> 1. Within the age of 18 years; or
>
> . . .
>
> ➥ the time of such disability shall not be a part of the time limited for the commencement of the action.

Upon information and belief, Plaintiff J.D., alleged to be the minor Plaintiff's parent/mother, is and was a person over 18 years of age at the time of the alleged events. The tolling applicable to B.D.'s claim does not apply to B.D.'s adult parent. More than two years have passed since, as alleged in the Complaint, the date Plaintiff J.D. became aware of the allegations concerning her minor son on November 10, 2016. The limitations period ran on J.D.'s claims on November 10, 2018. Accordingly, Defendants are entitled to dismissal of Plaintiffs' Complaint as to Plaintiff J.D. *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 967 P.2d 437 (1998) (a court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations).

C. Plaintiffs' Sixth Cause of Action For Violation of the Nevada Constitution Fails to State a Claim On Which Relief Can be Granted.

Plaintiff's Sixth Cause of Action for an alleged violation of the Nevada State Constitution does not state a viable claim for relief. In support of this cause of action Plaintiffs cite several Articles of the Nevada Constitution:

> Article XI, §2 (requiring the Legislature to establish a system of Common schools and pass laws to secure general attendance "of the children"; it deprives a school district of funding for failure to provide instruction of a sectarian character);
>
> Article XI, §5 (requiring the Legislature to establish Normal schools of differing grades from primary to University, and requiring all professors and teachers in said schools take an oath as prescribed in Article XV, absent which the professor or teacher shall not be entitled to public monies);

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Article XV, §2 (setting forth the oath to defend and protect the Nevada and the United States Constitutions); and

Article I § 8(2) (declaring the rights of the accused in a criminal prosecution, jeopardy, due process of law, and eminent domain, and specifically (2) "No person shall be deprived of life, liberty, or property, without due process of law").

In and of themselves the foregoing do not create, and Plaintiffs cite no Nevada Constitutional provision or statute that creates a private right of action by them in the circumstances presented.

The Nevada Constitution provides no textual basis for a private right of action and the Nevada Legislature has not enacted a statutory vehicle creating such a right of action in Nevada. By contrast, in the federal system, persons sustaining a constitutional injury in violation of the United States Constitution are afforded an avenue for compensatory relief through the enactment of 42 U.S.C. §1983, or other similar civil rights statutes. In Nevada there are no explicitly comparable constitutional or statutory authorities creating a private right of action for violations of the Nevada State Constitution. Accordingly, Plaintiff has no standing to assert a private right of action under the Nevada Constitution. When "... a cause of action does not exist, [ ] courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Alexander v. Sandoval*, 532 U.S. 275, 286-87, 121 S. Ct. 1511 (2001) (holding that there is no private right of action to enforce disparate-impact regulations promulgated under Title VI of the Civil Rights Act).

The Nevada Supreme Court has cautioned the judiciary against permitting a private cause of action without a specific legislative directive. *See Baldonado v. Wynn*, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008) (stating "the absence of an express provision providing for a private cause of action to enforce a statutory right strongly suggests that the Legislature did not intend to create a privately enforceable judicial remedy"); *Collins v. Palczewski*, 841 F. Supp. 333, 340 (D. Nev. 1993) (stating "§197.200 is strictly criminal in nature and possess no civil implications").

The judiciary across the country has been hesitant to create an implied cause of action for monetary relief when there are other adequate remedies for compensation under the law. *See e.g.,*

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Katzberg v. The Regents of the University of California, 29 Cal.4th 300, 58 P.3d 339 (2002); *Board of County Com'rs of Douglas County v. Sundheim*, 926 F.2d 545 (Colo. 1996); *Ferrer v. State of New York*, 655 N.Y.S.2d 900 (1996); *Shields v. Gerhart*, 658 A.2d 924 (Ver. 1995); *Beaumont v. Bouillion*, 896 S.W.2d 143 (Tex. 1995); *Hunter v. City of Eugene*, 787 P.2d 881 (Or. 1990); *King v. Alaska State Housing Authority*, 633 P.2d 256 (Alaska 1981). In so doing, these other state courts have generally followed the lead of the Supreme Court to only allow a direct action under the Constitution where no other "equally effective or adequate remedy exists." *Carlson v. Green*, 446 U.S. 14, 18-19 (1980). The Supreme Court of California has specifically concluded that the majority of jurisdictions addressing the issue have declined to recognize an implied cause of action under their various state constitutions in the absence of any historical basis. *See Katzberg*, 58 P.3d at 345 n.10 (noting fourteen jurisdictions refusing to recognize a cause of action for the violation of a state constitutional provision).

In this case, Plaintiffs can and have asserted multiple claims under state tort theories of liability in the remaining six causes of action stated in the Complaint. Plaintiffs, thus, seek compensation under the available state remedies rendering their proposed claims for a violation of state constitutional rights purely superfluous. If there is to be a private cause of action under the state constitution in Nevada, the decision should be left to the Legislature. The Legislature, to this point, has declined to create such a right of action and the Court should defer to them until that time. Thus, Plaintiffs' Sixth Cause of Action premised under an alleged violation of the Nevada State Constitution fails to state a claim for the damages they seek.

III.

CONCLUSION

Based upon the foregoing, the CCSD Defendants request the following relief:

1. That all claims by Plaintiff J.D. be dismissed as barred by the statute of limitations; and

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2. That Plaintiffs' Sixth Cause of Action asserting violation of the Nevada Constitution, be dismissed for failure to state a claim.

DATED this 28th day of June, 2022.

OLSON CANNON GORMLEY & STOBERSKI

By: _____

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CERTIFICATE OF SERVICE

On the 28 day of June, 2022, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D. AND PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5), on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual. Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, and individual; DOE STUDENT 3, and individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive. Defendants.	CASE NO.: A-22-853154-C DEPT NO.: 13 **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D. AND PLAINTIFFS' CONSTITUTIONAL CLAIMS PURSUANT TO NRCP 12(b)(5)**

Plaintiffs, B.D., a minor, by and through his natural mother and parent, J.D., and J.D., an individual,[1] (hereinafter "Plaintiffs"), by and through their counsel, Christian M. Morris, Esq.,

[1] Plaintiffs' names have been kept confidential pursuant to NRS 200.3771.

Case Number: A-22-853154-C

Alexandra B. McLeod, Esq., and Kimberly A. Nelson, Esq., of **NETTLES | MORRIS**, hereby submits the following OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D. AND PLAINTIFFS' CONSTITUTIONAL CLAIMS PURSUANT TO NRCP 12(b)(5).

This Opposition is based on NRCP 12(b)(5), the pleadings and papers on file, the following Memorandum of Points and Authorities, and oral argument as may be allowed by counsel at the time of hearing.

DATED this 12th day of July, 2022.

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MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION & BACKGROUND INFORMATION

On May 25, 2022, Plaintiffs, B.D., a minor, and his mother, J.D., filed suit against Defendants due to continued and repeated sexual abuse that B.D. endured at the hands of classmates from August to November of 2016 because Defendants failed to properly supervise students in the elementary school bathroom.[2] Specifically, Plaintiffs' alleged that Defendants knew of highly inappropriate sexual behavior by students who sexually abused B.D., but took no action to correct such behavior or protect B.D. from possible sexual assault.[3] Regrettably, the sexual abuse continued until a substitute teacher informed B.D.'s parents about the sexual abuse and a report was immediately filed with the Las Vegas Metropolitan Police Department, resulting in an investigation.[4] Plaintiffs allege that Defendants' actions or omissions were within the scope of their duties and responsibilities as employees or agents of Clark County School District ("CCSD").[5] Plaintiffs allege that due to Defendants' actions and the unwelcomed and highly inappropriate sexual assault suffered by B.D., Plaintiffs have suffered trauma, anxiety, and severe emotional distress which required medical and psychological treatment.[6]

Plaintiffs note that the Nevada Constitution provides for the establishment of a uniform system of schools which includes CCSD and the school where B.D. was sexually abused.[7] Additionally, Plaintiffs note that the Nevada Constitution requires teachers to take and subscribe to an oath to support, protect, and defend the Nevada Constitution and perform all duties of their office as a teacher faithfully, and based on the allegations there is an inference that Defendants failed to meet their obligations under that oath.[8] Even more, Plaintiffs note that Nevada has

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[2] *See Plaintiffs' Complaint* at 3:3-20.
[3] *Id*. at 5:21-6:7.
[4] *Id*. at 5:18-23.
[5] *Id*. at 6:5-10.
[6] *Id*. at 6:11-21.
[7] *Id*. at 16:5-8.
[8] *Id*. at 16:9-16.

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waived immunity for its political subdivisions, the Nevada constitution guarantees due process rights, and that Nevada law permits actions for damages that result from the deprivation of individual's rights, privileges, or immunities secured by the Constitution of the State of Nevada.[9]

Defendants now seek to improperly exclude the claims of B.D.'s natural mother, J.D. claiming that the statute of limitations has long passed for her claims and prevent Plaintiffs from enforcing their rights to the protections and guarantees of the Nevada Constitution. However, Defendants have not and cannot establish as a matter of fact or law that J.D.'s claims are barred by the statute of limitations or that the Nevada Constitution does not permit individual claims for violations of due process rights guaranteed and protected by the Nevada Constitution. In effect, Defendants conclude their analysis prematurely without properly evaluating the facts and circumstances of this case and applicable legal standards for the statute of limitations or remedies available to protect violations of rights under the Nevada Constitution. Accordingly, Defendants have failed to carry the heavy burden of proof required to establish that dismissal is appropriate and justified for J.D.'s claims and Plaintiffs' claims for violation of their rights under the Nevada Constitution.

II.

LEGAL STANDARD FOR 12(B)(5) MOTION TO DISMISS

A complaint, or portions thereof, may be dismissed where "it appears beyond doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief."[10] In assessing a motion to dismiss, this Court must construe the pleadings liberally and draw every reasonable inference in favor of the non-moving party.[11] All factual allegations of the complaint must be accepted as true.[12] A complaint must not be dismissed for insufficiency, for failure to state a cause of action, unless it appears to a certainty that plaintiff is entitled to no relief

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[9] *Id*. at 16:17-26.

[10] *See Edgar v. Wagner*, 101, Nev. 226, 228, 699 P.2d 110, 112 (1985) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

[11] *Lubin v. Kunin*, 117 Nev. 107, 110 n. 1, 17 P.3d 422, 425 (2001) (citations omitted).

[12] *Vacation Village v. Hitachi Am.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994) (*citing Capital Mortgage Holding v. Hahn*, 101 Nev. 314 315, 705 P.2d 126, 126 (1985)).

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under any set of facts which, if accepted by the trier of fact, would entitle him to relief as matter of law.[13]

Additionally, "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for the relief sought. . . ."[14] Further, "[t]he test for determining whether the allegations of a cause are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the claim and relief requested."[15] Because Nevada is a notice-pleading jurisdiction, our courts liberally construe pleadings to place into issue matters, which are fairly noticed to the adverse party.[16] A "pleading of conclusions, either of law or fact, is sufficient so long as the pleading gives fair notice of the nature and basis of the claim."[17] A court can dismiss a complaint for failure to state a claim upon which relief can be granted if it is clear beyond a doubt that the action is barred by the statute of limitations.[18]

Under the standard of review for motions brought pursuant to NRCP 12(b)(5), Plaintiff has a very low burden to meet. In contrast, Defendants have a very high bar to overcome to prevail on their motion to dismiss. Defendants must show *beyond a doubt* that Plaintiffs cannot prove the alleged facts entitle Plaintiffs to relief as set forth in their Complaint and that the statute of limitation has expired.

III.

LEGAL ARGUMENT

Defendants' motion is inappropriate and should be denied as Defendants have failed to establish as a matter of fact or law that the statute of limitations passed long ago for J.D.'s claims, and Defendant has not established as a matter of law that the Nevada Constitution does not permit an individual right of action to protect and legitimize due process rights guaranteed by the Nevada

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[13] *Simpson v. Mars Inc.*, 113 Nev. 188, 929 P.2d 966 (1997).
[14] NRCP 8(a).
[15] *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984) (citations omitted).
[16] *Hay v. Hay*, 100 Nev. 196, 198 678 P.2d 672, 674 (1984) (*citing* NRCP 8(a)).
[17] *Crucil v. Carson City*, 95 Nev. 583, 585, 600 P.2d 216, 217 (1979).
[18] *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998).

Constitution. Specifically, Defendant fails to establish that the statute of limitations was not tolled for J.D.'s claims based on NRS 11.215 considering the language of the statute and legislative intent of recent amendments to the law. Additionally, Defendants' argument that the Nevada Constitution does not explicitly provide for a private right of action for violation of the Nevada Constitution, ignores that the Nevada Constitution also does not explicitly prohibit such claims. Accordingly, Defendants have failed to meet the high burden of proof required to establish that dismissal is appropriate for J.D.'s claims and Plaintiffs' claims for violation of their rights guaranteed by the Nevada Constitution.

A. Defendants Did Not Establish the Statute of Limitations Expired for J.D.'s Claims

Dismissal of J.D's claims is not justified or appropriate because Defendants have failed to establish or analyze if the statute of limitations for her claims is tolled by NRS 11.215, or if there is an ambiguity in the law that justifies tolling the statute of limitations for J.D.'s claims based on legislative intent and recent changes to NRS 11.215. Defendants have the burden to establish that the statute of limitation has clearly run for J.D.'s claims, and while Defendants briefly acknowledge NRS 11.215 in their motion, they fail to properly evaluate if the plain text of the law permits J.D. to bring her claims that would otherwise be barred by the statute of limitations. Having failed to establish that NRS 11.215 does not permit J.D. to bring her claims, Defendants have failed to carry their burden of proof, and so, dismissal of J.D.'s claims is inappropriate.

Pursuant to NRS 11.215 claims for damages for injuries arising from sexual abuse of a minor can be brought "at <u>any time after</u> the sexual abuse or sexual exploitation occurred."[19] Specifically, NRS 11.215 provides for recovery for injuries arising from sexual abuse as follows:

> <u>An action</u> to recover damages for an <u>injury to a person arising from the sexual abuse</u> or sexual exploitation of the plaintiff which occurred when the plaintiff was less than 18 years of age may be commenced against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff at any time after the sexual abuse or sexual exploitation occurred.[20]

[19] NRS 11.215 (emphasis added).
[20] NRS 11.215(1) (emphasis added).

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Here, Defendant acknowledges and improperly refers to NRS 11.215 as a law for "victim action for sexual abuse damages against a perpetrator" but Defendants do not establish that NRS 11.215 does not permit J.D. to brings her claims.[21] In fact, NRS 11.215 is identified by the Legislature as a law that permits "Actions for damages for injury arising from sexual abuse or sexual exploitation of minor" which reasonably applies to J.D.'s claims.[22] Unfortunately, the law is ambiguous and can be interpreted as permitting J.D.'s claims, and therefore, requires statutory interpretation and analysis based on legislative intent, which Defendants failed to provide.

When a statute's language is plain and unambiguous, the statute's plain language should be applied.[23] When the statute is subject to more than one reasonable interpretation, it is ambiguous, and the Court must look to legislative history and apply rules of statutory interpretation to determine the statute's meaning.[24] Indeed, when construing an ambiguous statutory provision, the court must determine the meaning of the words used in a statute "by examining the context and spirit of the law or the causes which induced the Legislature to enact it."[25] Additionally, "statutory interpretations should not render any part of a statute meaningless, and a statute's language should not be read to produce absurd or unreasonable results."[26]

Here, the plain language of NRS 11.215 is ambiguous and statutory interpretation and analysis, including considerations of legislative intent, supports finding that NRS 11.215 permits J.D. to bring her claims arising from the sexual abuse of her minor child, who is also a named plaintiff, at any time. Specifically, the plain language of NRS 11.215 provides that "an action" to recover for "an injury to a person" arising from sexual abuse of a minor plaintiff can be brought "at any time" against the perpetrator. The plain language of the statute is ambiguous because it provides that the actions can be brought for injury to a person when and if the action arises from sexual abuse of a minor plaintiff. Admittedly, the statute requires that the minor plaintiff bring claims against the perpetrator but is silent as to if the action may include claims against joint

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[21] *See Defendants' Motion* at 5:17-28.
[22] NRS 11.215
[23] *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007).
[24] *Id.* at 404, 168 P.3d at 716.
[25] *Id.* at 405, 168 P.3d at 716 (internal quotations omitted).
[26] *Id.* (internal quotations omitted).

tortfeasors or if people who suffered injuries that arise from sexual abuse of the minor plaintiff can also bring their claims.

Here, B.D., a minor plaintiff, brought claims against the alleged perpetrator and joint tortfeasors, and based on the ambiguity of NRS 11.215 it is reasonable that his mother, J.D. is a person with injuries arising from the sexual abuse of a minor and can also bring an action for her injuries at any time. Had the Legislature intended to limit tolling the statute of limitations only for minor plaintiffs who suffered injuries arising from sexual abuse, it had the power and ability to craft such a law. However, the Legislature specifically used the term "a person" and not "plaintiff" when they drafted the law, which is especially significant as the term "plaintiff" is used repeatedly later. In short, the fact that the Legislature permits actions for injuries arising from sexual abuse of a minor to "a person" and not only a minor plaintiff, who is the victim of sexual assault, is a deliberate choice of language that significantly alters who can bring claims for injuries at any time.

Understandably, Defendants emphasize and will argue that the plain language requires that a plaintiff bring a claim against the alleged abuser or perpetrator of the sexual abuse. However, B.D. has done exactly that, and the issue is if his natural mother's claims can be brought along with his action against all named Defendants. Unfortunately, the plain language of the statute is ambiguous as to if B.D.'s mother can bring her claims at the same time or if they are barred by the statute of limitations. Surely, his mother is a person with claims who suffered an injury that arises from sexual abuse of the minor plaintiff, which occurred when B.D. was under 18 years of age. Due to the ambiguity of the plain language of the statute, the Court should turn to legislative intent.

In cases involving sexual abuse of a minor, the Nevada Supreme Court has noted that statutory interpretation permits a court to modify, restrict, or extend the meaning of the words, to meet the plain, evident policy and purview of the act, and to realize the intention of the Legislature at the time it was enacted.[27] Additionally, the *Peterson* Court noted that torts for the sexual abuse of a minor present unique problems because such actions are complicated by "stigma, fear and depression" that is inevitably associated with and brought on by sexual abuse of a minor.[28] Here,

[27] *Petersen v. Bruen*, 106 Nev. 271, 276-77, 792 P.2d 18, 21 (1990) (citations omitted).
[28] *Id*. 106 Nev. at 281, 792 P.2d at 24.

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the intention of the Legislature is to inclusively permit claims for injuries to a person arising from sexual abuse of a minor, and allow such actions to be brought at any time. Such an intention is supported by the fact that the Legislature has progressively increased the statute of limitations for claims over the years to be more inclusive. Specifically, in 2017 amendments increased the statute of limitations for such claims from 10 years to 20 years, and in 2021 the law was rewritten to permit claims at any time after the abuse occurred.[29] Reasonably, such changes evidence a legislative intent to encourage civil claims for injuries arising from sexual abuse of a minor, likely based on the stigma, fear, and other complications related to sexual abuse of a minor that normally prevent such claims from being filed.

Additionally, matters of public policy support permitting J.D. to bring her claims and the purposes of relevant statute of limitations will not be frustrated if her claims can be brought. Here, the Legislature and society recognize that decisions about how and when to bring claims based on the sexual abuse of a minor is a difficult and sensitive topic with many complicated factors to consider. As a result, the Legislature has determined that such claims can be brought at any time after the sexual abuse. Surely, the stigma and other factors that prevent plaintiffs from bringing claims based on sexual abuse of a minor apply to J.D. and her considerations as to what is in the best interest of her child and what stigma, or relived trauma might result from the decision to file civil claims against an abuser and associated defendants. Even more, the purpose and aims of providing statutes of limitations supports permitting J.D. to bring her claims.

Here, the purpose of establishing statute of limitations will not be frustrated if J.D. is permitted to bring her claims along with her minor child who was the victim of sexual abuse, because it is reasonable that such intertwined claims be litigated at the same time, and it would be absurd to require otherwise. Justice Holmes noted that the primary purpose of statutes of limitation is to limit "surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."[30] However, the Nevada

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[29] *See Amendment Notes* to NRS 11.215.

[30] *Petersen*, 106 Nev. at 273, 792 P.2d at 19 (quoting *Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 348-349 (1944)).

Supreme Court noted that it is difficult to "difficult to place the plight of the abuser in a position of preeminence over that of the victim irrespective of delay" in cases involving sexual abuse of a minor, especially considering victims are often suffering from "crippling symptoms as guilt, anxiety, embarrassment, depression, and fear over protracted periods of time."[31] Reasonably, such considerations apply to J.D. and her decision to bring claims and initiate litigation for injuries arising from the sexual abuse of her minor child.

The primary purpose of statute of limitations is not disturbed when and if J.D. is permitted to litigate her claims along with B.D. her minor child. Specifically, the issues and evidence are already going to be subject to litigation, and there will be no additional burden on the legal system if J.D. can bring her claims at this time. To the contrary, it would be inefficient and absurd to force J.D. to bring her claims within two years while permitting B.D. to bring his claims at any time. By extension, there is no identifiable public policy that would support dismissing J.D.'s claims because she was not the individual subjected to sexual abuse. If B.D. can bring his claims it is entirely reasonable and logical that his mother can also litigate her claims at the same time, and there is no clear prohibition of bringing such claims under NRS 11.215.

Indeed, J.D.'s injuries and damages are entirely derivative of the fact that her minor child was sexually abused, and those injuries subject her to similar feelings of guilt, depression, and fear of stigma. Here, J.D. is a placed in the difficult position of deciding the best interests of her child and if bringing claims against the abuser and responsible parties is the right thing to do for herself and society as well. It is reasonable and appropriate that she should not be rushed into making such a decision or barred recovery for her injuries because she delays filings claims for injuries based on the sexual abuse of her minor child. The Legislature has made it clear that such claims can be brought regardless of timing, but the law as drafted is ambiguous as to what claims by what injured persons can be brought. As the purpose of providing statutes of limitation will not be frustrated, and issues involving sexual abuse of a minor present unique complications, it is reasonable to assume that the Legislature would be inclusive and seek to permit all claims from all injured parties

[31] *Id*. at 106 Nev. at 277-78, 792 P.2d at 22.

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that arise from sexual abuse of a minor to be brought and litigated at any time, free from constraints of any statute of limitations.

In short, Defendants fail to establish that NRS 11.215 does not apply to J.D.'s claims or that the plain language of the statue is not ambiguous. However, the title of the law, plain language of the law, and legislative intent of revising the law supports finding that the Legislature intended to eliminate any statute of limitations for injuries to any person that arise from sexual abuse of a minor. Based on such facts and statutory interpretation of NRS 11.215, Defendants have failed to establish that the statute of limitations ran on J.D.'s claims or that NRS 11.25 does not apply to her claims, and thus, dismissal of her claims is not justified.

B. Defendants Did Not Establish that the Nevada Constitution Precludes a Private Right of Action for Violation of Plaintiffs Due Process Rights

Without a mechanism for enforcement, no constitution is worth the paper it is written on. The framers and ratifiers of the Nevada Constitution understood this and provided for judicial enforcement of constitutional rights. Specifically, Article 6, Section 1, provides that "[t]he judicial power of this State is vested in a court system...." and this "judicial power" includes to settle "suit[s] against [the] state," under Article 4, Section 22 ("Provision may be made by general law to bring suit against the State as to all liabilities originating after the adoption of this Constitution."). Additionally, the forum for such suits is "[t]he District Courts in the several Judicial Districts of this State" which "have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts."[32] Constitutional analysis must begin with the plain text, and the Nevada Constitution permits the state to be subject to suit and gives the Legislature the power to establish procedural devices to accomplish that constitutional design.

The constitutional text should also be understood as it has been interpreted and applied in case law. High courts across the country have recognized that state constitutions permit enforcement of constitutional rights against state and local governments.[33] Indeed, numerous cases

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[32]Nev. Const. art. 6 § 6 (emphasis added).

[33] *See, e.g., Ladd v. Real Estate Comm'n*., 230 A.3d 1096, 1108 (Pa. 2020) (holding that "the General Assembly's police powers are also limited and subject to judicial review"); *Patel v. Tex. Dep't of Licensing & Regulation*, 469 S.W.3d 69, 76— 77 (Tex. 2015) (rejecting the argument that sovereign immunity bars claims for alleged

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make it clear that the constitution is the state's highest law and that everyone—not just government officials—has the right to challenge state action based on constitutional guarantees. In more than 150 years of statehood, Nevada's courts have repeatedly recognized this so-called private right of action.[34] In recent years this Court has repeatedly assumed that a private right of action exists, including for money damages based on violation of Nevada constitutional rights.[35] None of the cited cases would make sense or be sound law if courts did not have the power to adjudicate disputes over individual constitutional rights.[36]

In short, under Article 6, the courts are charged with exercising the "judicial power" against the executive and legislative powers. The text of the constitution gives courts the sole responsibility of adjudicating disputes between ordinary people and the state government. If any doubt remained, Article 4 authorizes "suit[s] against the State as to all liabilities" provided some mechanism is "made by general law." Reasonably, courts have understood this constitutional structure as providing a private right of action against the government, including an action for damages. Further, the Nevada Legislature has adopted several mechanisms "by general law" to allow, if not encourage, claims to protect the constitutional rights of individuals. Specifically, the Legislature has authorized suits against the State of Nevada and its political subdivisions.

In addition to the private right of action built into the Constitution, the Nevada Legislature has authorized suits against the state and waived its liability. Like every other state, Nevada has

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constitutional violations); *cf. Free Enter. Fund v. Pub. Co. Accounting Oversight Bd*., 561 U.S. 477, 491 n.2 (2010) (collecting cases).

[34] *See, e.g., S. Pac. Co. v. Dickerson*, 80 Nev. 572, 576, 397 P.2d 187, 189-90 (1964) (holding that state due process claims could be brought against the Public Service Commission); *Saunders v. State*, 70 Nev. 480, 481-82, 273 P.2d 970, 970-71 (1954) (recognizing claim for damages as compensation under the Nevada Constitution's Takings Clause); *Marymont v. Nev. State Banking Bd*., 33 Nev. 333, 111 P. 295, 303 (1910) (holding a banking act unconstitutional under Article 1, §§ 1, 8, & 20); *State v. Preble*, 18 Nev. 251, 2 P. 754, 754 (1884) (holding an official's acts did not accord with the constitutional right granted by Article 1, § 16 [repealed in 1924] and issuing a writ of mandamus allowing a foreigner to purchase land).

[35] *See, e.g., City of Fernley v. State, Dep't of Tax*, 132 Nev. 32, 366 P.3d 699 (2016) (assuming a constitutional damages claim is appropriate when deciding which statute of limitations applies); *Ransdell v. Clark Cty*., 124 Nev. 847, 192 P.3d 756 (2008) (resolving constitutional damages claim on the merits without suggesting any problem with bringing the claim directly under the Nevada Constitution).

[36] *See City of Sparks v. Sparks Mun. Ct*., 129 Nev. 348, 362, 302 P.3d 1118, 1128 (2013) ("This court has long recognized that the judiciary as a coequal branch of government has the inherent power to protect itself and to administer its affairs. Inherent judicial power stems from two sources: the separation of powers doctrine and the power inherent in a court by virtue of its sheer existence." (internal quotations and citations omitted)).

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adopted the Uniform Declaratory Judgements Act.[37] Specifically the Nevada law provides a cause of action as follows:

> Any person . . . whose rights, status or other legal relations are affected by a statute [or] municipal ordinance... may have determined any question of construction or validity arising under the . . . statute [or] ordinance. . . and obtain a declaration of rights, status or other legal relations thereunder.[38]

This broad grant of capacity to sue reasonably includes constitutional claims.[39] However, there are limitations on the state's waiver of immunity. For example, no award may exceed $150,000.00 for damages.[40] Yet, such a limitation only underlines the general concept that ordinary people can sue the state government for violating their state constitutional rights and damages are available.

Finally, the Court should recognize that the judiciary has a broad range of remedies available when an ordinary person challenges the constitutionality of state action. Some remedies are created by statute and include the power to enter a declaratory judgment, order an injunction, or award damages.[41] Regardless of legislative decisions, Nevada constitutional rights have always been understood to carry with them a right to request relief from the courts in Nevada. Any right that is unenforceable is not worth the paper it is written on. Accordingly, in Nevada, ordinary people have always had the right to petition courts for redress when the government violates constitutional rights, and the judiciary has a broad range of remedies available to address such constitutional violations. In effect, leaving constitutional rights unenforceable in court would neuter their protections, making them meaningless. Accordingly, Plaintiffs' claims for violation of their due process rights under the Nevada Constitution should not be dismissed, and this Court should preserve and affirm the right of the people to seek judicial redress when government officials, including CCSD employees, break their oaths to uphold the Nevada Constitution and laws.

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[37] *See* NRS Chapter 30.
[38] NRS 30.040(1) (emphasis added).
[39] *See* NRS 30.130 (providing "if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard").
[40] NRS 41.035(1)
[41] *See* NRS 30.040(1); NRS 33.010; NRS 41.031.

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The Nevada Constitution requires that teachers and CCSD employees adhere to an oath of office and uphold laws and duties of their office. Here, Plaintiffs alleged that Defendants failed to adhere to their oath of office and that such failures resulted in deprivation of Plaintiffs' Nevada Constitutional rights without due process, and that relief is justified. Further, public policy supports and justifies holding Defendants responsible for their failure to uphold their oath of office, as some form of accountability should exist to ensure that CCSD employees are preventing the sexual abuse of minors when possible. Accordingly, Defendant has failed to establish as a matter of law that the Nevada Constitution prohibits a private right of action for Defendants' failure to uphold their duties and obligations under the Nevada Constitution.

V.

CONCLUSION

WHEREFORE, pursuant to NRCP 12(b)(5), Defendants have failed to establish as a matter of fact or law that J.D.'s claims are barred by the statute of limitations and that NRS 11.215 does not permit her to bring her claims at any time for injuries that arise from sexual abuse of a minor or that the Nevada Constitution prohibits a private right of action based on violation of Plaintiffs' due process rights. Accordingly, Plaintiffs respectfully request that Defendants' request to dismiss the claims of J.D. and Plaintiffs' claims for violation of the Nevada Constitution be DENIED at this time.

RESPECTFULLY SUBMITTED this 12th day of July, 2022.

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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I hereby certify that on this 12th day of July, 2022 a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D. AND PLAINTIFFS' CONSTITUTIONAL CLAIMS PURSUANT TO NRCP 12(b)(5)** was served to the following parties via electronic transmission through email and the Odyssey E-file NV System:

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, I.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO: A-22-853154-C
DEPT NO: 13

Date of Hearing: 8/4/2022
Time of Hearing: 9:00 a.m.

DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D., AND PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5)

Case Number: A-22-853154-C

COME NOW Defendants CLARK COUNTY SCHOOL DISTRICT (CCSD), a political subdivision of the State of Nevada, MARIBEL McADORY, JEFFREY GRANGER, and PAMELA NORTON-LINDEMUTH, (hereinafter collectively the "CCSD Defendants") through their attorneys, JAMES R. OLSON, ESQ., WALTER R. CANNON, ESQ., and STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and hereby Reply to Plaintiffs' Opposition to the CCSD Defendants' Motion to Dismiss portions of Plaintiffs' Complaint for failure to state a claim upon which relief can be granted, pursuant to NRCP 12(b)(5).

POINTS AND AUTHORITIES

I. RELIEF REQUESTED

For purpose of clarification, the CCSD Defendants' Motion seeks the following limited relief:

1. Dismissal of all claims by Plaintiff J.D., the adult mother of the minor Plaintiff B.D. It is B.D., the minor child, who is alleged to be the child victim of sexual assault. Plaintiff J.D. is not a victim of the sexual assault alleged in this action. Defendants do not seek dismissal of the tort claims by or on behalf of the minor child, only the claims by the child's adult mother for her own damage claimed to have resulted from the alleged assault on her child in November 2016. The adult mother's claims are governed by a two-year personal injury statute of limitations and are time barred as is Plaintiffs' May 25, 2022, Complaint.
2. Dismissal of the Sixth Cause of Action for violation of the Nevada State Constitution because there is no statutory mechanism in Nevada creating the private right of action asserted by Plaintiffs. Not all constitutional provisions give rise to a private right of action and in opposition to Defendants' Motion to Dismiss, Plaintiffs have failed to articulate a statutory vehicle for their asserted personal right of action.

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II. LEGAL ARGUMENT

A. Plaintiff JD attempts to save tardy claims for her own personal damages by piggy-backing on statutory provisions plainly intended to extend statutes of limitations applicable to claims by child sexual abuse victims.

The abuse to Plaintiff B.D. (hereinafter the "Minor Child") as alleged in Plaintiffs' Complaint, occurred in November 2016. Plaintiffs' Complaint was not filed until May 25, 2022 – five and one-half years later. Therein, Plaintiff J.D. (hereinafter "Mom") asserts claims for her own damages related to the abuse experienced by the Minor Child.

Plaintiffs do not contest that Mom's claims are, as a general rule, governed by a two-year limitations period pursuant to NRS 11.010 and NRS 11.190(4)(e). Instead, Plaintiffs argue NRS 11.215 extends the limitations period for Mom's damage claimed to arise from the alleged sexual abuse of her Minor Child. Without citing a single case wherein NRS 11.215, or any similar statute in any other jurisdiction, has been extended to the parent of a minor sexual abuse victim, Plaintiffs assert the phrase "injury to a person" in the Nevada statute's first sentence, extends the limitation period for the adult parent of a sexual abuse victim, or at least creates ambiguity regarding the extent of the application of the statute. This is Plaintiffs' sole argument in opposition to the Motion to Dismiss Mom's claims.

NRS 11.215 does not extend the limitations period for the parent of a child sexual abuse victim.

1. NRS 11.215 is clear on its face.

NRS 11.215 provides an extended statute of limitations for a person who is a *minor victim* of sexual abuse or sexual exploitation seeking to recover damages against a perpetrator of abuse, as follows (emphasis added):

> **NRS 11.215 Actions for damages for injury arising from sexual abuse or sexual exploitation of minor; actions involving injury arising from appearance of minor in pornography.**
>
> 1. An action to recover damages for an injury to a person arising from the sexual abuse or sexual exploitation of the plaintiff which occurred when the plaintiff was less than 18 years of age may be commenced against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff at any time after the sexual abuse or sexual exploitation occurred. In such an action, if the alleged injury to the plaintiff is the result of a series of two or more acts constituting sexual

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abuse or sexual exploitation, the plaintiff is not required to identify which specific act in the series of acts caused the alleged injury.

2. An action to recover damages pursuant to NRS 41.1396 [action by victim of pornography involving minors] may be commenced at any time.

3. An action to recover damages pursuant to NRS 41.13965 [action by victim of sexual abuse using judgment of conviction of perpetrator] must be commenced within 30 years after the plaintiff reaches 18 years of age.

4. As used in this section:

(a) "Sexual abuse" has the meaning ascribed to it in NRS 432B.100.

(b) "Sexual exploitation" has the meaning ascribed to it in NRS 432B.110.

(Added to NRS by 1991, 117; A 1993, 254, 453, 456; 2009, 2661; 2017, 483; 2021, 1585)

Contrary to Plaintiffs' argument, the statute is clear on its face. It plainly eliminates any limitation period for a person who is a plaintiff seeking to recover damages in an action for their own victimization or abuse while a minor, ". . . against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff. . ." "Generally, when a statute's language is plain and its meaning clear, the courts will apply that plain language." *Leven v. Frey*, 123 Nev. 399 168 P.3d 712, 715 (2007), *citing International Game Tech. v. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006).

The plain language of NRS 11.215 does not save Mom's tardy suit against the CCSD Defendants – Mom is not the alleged sexual abuse victim and the CCSD Defendants are not the alleged perpetrators of sexual abuse or exploitation.

2. Ambiguity is resolved by looking to legislative intent

If the Court agrees with Plaintiffs' assertion that the language "injury to a person" creates ambiguity as to the statute's application to the parent of a child sexual abuse victim, the Court is entitled to consider the statute's legislative history to resolve the question of legislative intent. *See Leven v. Frey*, supra at 716. When construing an ambiguous statutory provision, the court determines the meaning of the words used in a statute by "examining the context and the spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and policy may be involved as an interpretive aid." *See McKay v. Bd. of Supervisors*, 102 Nev. 644, 650-51, 730 P.2d 438, 443 (1986) (citation omitted). Thus, when interpreting a statute, the court

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considers the statute's multiple legislative provisions as a whole. *International Game Tech.*, 122 Nev. at 152, 127 P.3d at 1102. Additionally, a statute's language "'should not be read to produce absurd or unreasonable results.'" *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (*quoting Glover v. Concerned Citizens for Fish Pond*, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002), *overruled in part on other grounds by Garvin v. Dist. Ct.*, 118 Nev. 749, 59 P.3d 1180 (2002)).

The historical nexus of NRS 11.125, is instructive:

1990: NRS 11.125 was enacted in 1991 in response to a 1990 Nevada Supreme Court decision, *Peterson v. Bruun*, 106 Nev. 271, 792 P.2d 18 (1990). *See* Exhibit "A" – *Peterson v. Bruun*, 106 Nev. 271, 792 P.2d 18 (1990). Therein the plaintiff had been sexually abused by the defendant over an eight-year period of time commencing when the plaintiff was seven years old. As an adult, the plaintiff first discovered the nexus between his emotional issues and the defendant's abuse during counseling for emotional and psychological problems. The civil action was then filed – approximately 8 years after the defendant last molested the plaintiff. In the absence of a statute such as NRS 11.215, there was no specific limitation period for victims of child sexual abuse. Therefore, the Nevada Supreme Court looked to the "discovery rule" which tolls a statutory period of limitations until the injured party discovers or reasonably should have discovered facts supporting a cause of action. *Id.* at 274, and at 20, *citing Sorensen v. Pauliukonis*, 94 Nev. 440, 443-444, 581 P.2d 851, 853-854 (1978) (the rationale behind the discovery rule is that plaintiffs should be put on notice before their claims are barred by the passage of time). *See also Fidler v. Eastman Kodak Co.*, 714 F.2d 192, 198 (1st Cir. 1983). Based on the discovery rule rationale, the decision in *Peterson* held the plaintiff was entitled to maintain his action, finding that adults who were sexually abused as children present unique injuries which do not readily conform to the general statutory period of limitations. *Id.* at 281, and at 24 (emphasis inserted). Therefore, the Court held that if it is shown by clear and convincing evidence then the adult plaintiff was sexually abused during his minority by the defendant, no then existing statute of limitation applied to bar the action of an adult who was

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sexually abused as a child. The decision reveals the Court's concern with the specific trauma suffered by child victims of sexual abuse.

Significantly, footnoted in the *Peterson* decision, the Court encouraged the legislature to provide a period of limitation directly addressing the challenges posed for survivors of child sexual abuse asserting claims against a perpetrator, as follows:

> We are confident that the legislature will take such measures as it may deem advisable to address the instant ruling if it determines that demonstrated survivors of child sexual abuse should be limited in time within which enforceable actions may be pursued.

Peterson, supra, at 281, and at 25, fn 8.

1991: In the first legislative session following the 1990 *Peterson* decision, the 1991 Nevada Legislature added NRS 11.215 to NRS Chapter 11 as part of Assembly Bill 219. See Exhibit "B", p. 1 – NRS 11.215 Statutory Changes: 1991, 1993, 2009, 2017, and 2021. In its original form the statute contains the "injury to a person" language which Plaintiffs argue creates, through ambiguity, an extended limitation for the *parent* of a minor victim. The seminal language was:

> **Section 1. Chapter 11 of NRS** is hereby amended by adding thereto a new section to read as follows:
>
> *1. An action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 3 years after the plaintiff:*
>
> *(a) Reaches 18 years of age; or*
>
> *(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse,*
>
> *whichever occurs later.*
>
> *2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.*

See Exhibit "B", p. 1.

First, the enacted language itself is instructive. It specifies that the extension begins to run when the plaintiff reaches the age of 18, or "discovers" an injury caused by sexual abuse. This framework contemplates an injury that occurred to a minor, and/or to a person who has not discovered that their injury was caused by abuse, such as the plaintiff in *Peterson*.

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Second, the 1991 legislative history surrounding NRS 11.215 evidences a clear intent to extend limitations for injury to the victim plaintiff, "where a plaintiff was very young at the time of abuse, or when an individual, due to the traumatic nature of the abuse, repressed memories of an incident and was not able to fully remember what happened." *See* Exhibit "C", p. 2 (Legislative Counsel Bureau Summary of Legislation, Nevada Legislature Sixty-Sixth Session 1991, A.B. 219 Re: NRS 11.215). Consistent with the above analysis of the plain language of the statute in its original form, the legislative history contains reference to the *Petersen* decision. Further, the minutes of the March 7, 1991 Committee meeting regarding A.B. 219 (*see* Exhibit "C", pp. 6-10) reflect extensive discussion about the impact of abuse in a person of tender years (p. 6), and of the repression that occurs in a minor resulting in "total amnesia" regarding the abuse (p. 6). "[T]he normal reaction was to suppress the knowledge." (p. 7.) Testimony by Thom Reilly, then Deputy Administrator for the State Welfare Division, stressed that A.B. 219 "could open the door for all victims of childhood sexual abuse to recover damages from those who abused them. . . " (p. 8.)

Finally, the legislative record contains correspondence to the Bill's sponsor, Assemblyman Robert M. Sader, from a child sexual abuse survivor, which referenced the purpose of the Bill as "Extending Civil Statute for Adult Survivors of Child Sexual Abuse," and outlined other state statutes then existing or under consideration which focused on the "needs of the survivors." (p. 11.)

Significantly, the legislative record is *void* of *any* referenced intent to extend the limitation period for a minor victim's parent who was timely made aware of the alleged abuse.

1993: In two separate bills amending NRS 11.215 in 1993, the Legislature extended the limitation period of subsection 1 to 10 years, *see* Exhibit "B", p. 2, and created a new limitation period for a victim to recover proceeds of material based on or related to crimes perpetrated against the victim. *See* Exhibit "D", pp. 3-4. There is no language addressing bystander damage experienced by the parent of a child victim.

2009: In 2009, NRS 11.215 was amended by Assembly Bill No. 88, to provide that newly created remedies for persons who appeared in child pornography, would be covered by

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the extended limitations period set forth in NRS 11.215. *See* Exhibit "B" pp. 5-6. Again, the remedies and the extended limitations periods are directed to victims, not their bystander parents.

2017: In 2017, through AB 143, NRS 11.215 was again amended, this time extending the limitations period to 20 years after discovery. *See* Exhibit "B", p. 7. Illustrative of the intent of the statute as relevant to the issue at bar, are the explanation of the Act and the Legislative Counsel's Digest (emphasis added):

> AN ACT relating to civil actions; extending the statute of limitations for certain civil actions for damages to a person *for injuries incurred as a child* as a result of sexual abuse or pornography; and providing other matters properly relating thereto.
>
> **Legislative Counsel's Digest:**
>
> This bill extends the time by which a civil action to recover damages arising from the sexual abuse of a person who is less than 18 years of age must be commenced from 10 years to 20 years after the person reaches 18 years of age or discovers or should have discovered that an injury was caused by the sexual abuse, whichever is later. This bill also extends the time by which a civil action to recover damages arising from the appearance of a person who is less than 16 years of age in pornographic material must be commenced from 3 years to 20 years after the person reaches 18 years of age or after a court enters a verdict in a related criminal case, whichever is later.

Again, the clear legislative intent is to give consideration to persons victimized by sexual abuse when under the age of 18. The record remains void of any consideration to extend limitations periods for injuries claimed by adult bystander parents of child victims.

2021: Most recently, in 2021, the Legislature amended NRS 11.215 to create its current form, eliminating any limitation period at all. *See* Exhibit "B", pp. 8-9. Again, the Legislative Counsel's Digest is illustrative of the application of the extended limitation period to a plaintiff who was under the age of 18 at the time of their own abuse.

> **Legislative Counsel's Digest:**
>
> Existing law provides that a civil action to recover damages for sexual abuse that occurred when the plaintiff was less than 18 years of age must be commenced within 20 years after either of the following occurs, whichever is later:

(Emphasis added).

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3. NRS 11.215 does not extend the limitations period for parents of child victims.

Looking to the action at bar, Mom was the minor child's adult mother at all times relevant. She was told of the events which she alleges constituted abuse of the Minor Child (the events she claims give rise to her own claimed damage), on November 10, 2016. Neither the plain language of NRS 11.215, nor the clear legislative intent for, and purpose of the extended limitations period codified thereto between 1991 and the present date, apply to extend the limitations period to Mom's action for her own claimed damage. Mom is and was a person over 18 years of age at the time of the alleged assault on the Minor Child. She knew of the alleged assaults on November 10, 2016. More than two years have passed since that date. "In determining the intention of the legislature, courts are not bound to always take the words of a statute either in their literal or ordinary sense, if by so doing it would lead to any absurd or manifest injustice, but may in such cases modify, restrict, or extend the meaning of the words so as to meet the plain, evident policy and purview of the act and *bring it within the intention which the legislature has in view at the time it was enacted.*" (Emphasis added). *Peterson v. Bruun*, 106 Nev. 271, 276-277, 792 P.2d 18 (1990), *quoting Excalle v. Mark*, 43 Nev. 172, 176, 183 P. 387, 389 (1919). The legislative history of NRS 11.215 clearly evinces the intent to create an extended limitation period to allow child victims time to discover or remember suppressed abuse, and to achieve the maturity necessary to bring actions on their own behalf. There was no intent to extend limitations periods for the adult parents of such children who were aware of the alleged abuse at or about the time it occurred.

Accordingly, Defendants are entitled to dismissal of Plaintiffs' Complaint as to Mom. Plaintiff J.D. *See Bemis v. Estate of Bemis*, 114 Nev. 1021, 967 P.2d 437 (1998) (a court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations).

4. NRS 11.215 does not extend the limitations period against "joint tort-feasor."

Plaintiffs' logic in this regard is flawed for multiple reasons. First, the plain language of the statute applies to actions against perpetrators, not putative "joint tort-feasors." A foundational principal of statutory construction is that where statutory language is clear and makes specific

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mention of one thing, it implies the exclusion of another. "Expressio unis est exclusio alterius." *See State v. Wyatt*, 84 Nev. 731, 448 P.2d 827 (1968), *citing Ex Parte Aravenda*, 44 Nev. 30, 189 P. 619 (1920), *In Re Bailey's Estate*, 31 Nev. 377, 103 P. 232 (1909); and *State v. Baker*, 8 Nev. 141 (1872). The mention of suit against a perpetrator, without reference to a putative joint tortfeasor, excludes an extended limitations period for suit against a putative joint tort-feasor.

Second, the causes of action against the CCSD Defendants arise from multiple theories of their failure to protect the minor Plaintiff B.D. Although three "DOE STUDENT" defendants are identified in the caption of Plaintiffs' Complaint, Plaintiffs assert no causes of action against the Doe Students who are not, therefore, joint tortfeasors with CCSD in this action against the CCSD Defendants for failure to protect the minor Plaintiff.

B. There is no private right of action for an alleged violation of Article XI §2, Article XI §5, Article XV §2, or Article 1 §8(2) of the Nevada Constitution in the circumstances presented and Plaintiffs' Sixth Cause of Action must be dismissed.

Plaintiffs' Opposition to the CCSD Defendants' Motion to Dismiss the Sixth Cause of Action fails to articulate or provide legal authority creating a private right of action for any of the asserted violations of the Nevada Constitutional provisions cited in the Complaint. The Constitution is structural, and absent specific statute or provision creating a private right of action for damages, none exists. When "... a cause of action does not exist, [ ] courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Alexander v. Sandoval*, 532 U.S. 275, 286-87, 121 S. Ct. 1511 (2001). Further, the Nevada Supreme Court has cautioned the judiciary against permitting a private cause of action without a specific legislative directive. *See Baldonado v. Wynn*, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008) (stating "the absence of an express provision providing for a private cause of action to enforce a statutory right strongly suggests that the legislature did not intend to create a privately enforceable judicial remedy"); *Collins v. Palczewski*, 841 F. Supp. 333, 340 (D. Nev. 1993) (stating "§197.200 is strictly criminal in nature and possess no civil implications").

The Constitutional claims made by Plaintiffs warrant review. Article XI, §2 requires the Legislature to establish a system of Common schools and pass laws to secure general attendance of the children." Article XI, §5, requires the Legislature to establish schools of differing grades

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from primary to University, and requires professors and teachers in those schools to take an oath prescribed in Article XV. Article XV, §2 sets forth the referenced oath to defend and protect the Nevada and the United States Constitutions. Plaintiffs do not assert that the Legislature – who is not a party to this action – has failed to establish a system of commons schools nor that the CCSD Defendants failed to provide public instruction, failed to secure attendance of students, or that its teachers failed to take the oath. Even had they made these allegations, significantly, the penalty for any failure is not a private right of action. Under Article XI, the Legislature may deprive a school district of funding for any failure to comply with the laws enacted pursuant to this Article. A failure to take the oath prescribed by Article XV §2 prevents a teacher from receiving public money – the teacher could not be paid. The Article does not provide a private remedy for a violation of the oath.

Finally, Plaintiffs cite Article I, §8(2). This Article declares the rights of *the accused in a criminal prosecution*, jeopardy, due process of law, and eminent domain, and specifically, subsection (2) states: "No person shall be deprived of life, liberty, or property, without due process of law." Plaintiffs are not persons criminally accused and this is not an action for deprivation of property, through eminent domain or otherwise.

In sum, none of the cited Articles provide a private right of action for damages to any particular person, including a student or parent, in any given school district for a failure to supervise students as alleged in the action at bar. While Plaintiffs was eloquently regarding the *need* for an enforcement mechanism, Plaintiffs fail to actually identify an enforcement mechanism applicable to the facts herein and the State Constitutional Articles at bar. As outlined in Defendants' Motion, in Nevada there are no explicit constitutional or statutory authorities comparable to 42 U.S.C. §1983 creating a private right of action for the cited violations of the Nevada State Constitution, in the circumstances presented.

Plaintiffs' arguments in opposition to Defendants' Motion to Dismiss demonstrate a fundamental misconstruction of Defendants' Constitutional Argument put forth. Plaintiffs' misconstruction is first evident in their new, and unpled argument that Article 6, §1 of the Nevada Constitution creates the judicial system in the State of Nevada, and that Article IV, §22 allows

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for the Legislature to create general laws to bring suit against the State. Those legal premises are wholly irrelevant to Plaintiffs' claim for constitutional damages in this case. The Legislature has created a judicial system within the State of Nevada. The Legislature has created laws allowing for suit against the State. *See*, e.g. NRS Chapter 41. Yet Plaintiffs cite no statutory provision within Chapter 41, or any other Nevada statute, creating a private right of action for violation of the constitutional articles cited by them in the circumstances alleged, e.g. absence of school staff supervision allowing for Kindergartener on Kindergartener assault. Moreover, none of the cases cited by Plaintiffs secure a private right of action under any cited Article of the Nevada Constitution as an avenue for the tort damage allegedly sustained by a public school student while in school. Examining the authority proffered by footnote in Plaintiffs' Opposition:

Southern Pacific v. Dickerson, 80 Nev. 572, 397 P.2d 187 (1964) was not an action for damages. Instead, it was a declaratory relief action seeking statutory interpretation of a statute making it unlawful for a common carrier to operate freight and passenger trains without a fireman. Although the plaintiff argued application of the statute resulted a property deprivation without due process of law, in violation of Article I, §8 of the Nevada Constitution, the Court did not reach the merit of the due process claim as it determined the statute was inapplicable in the context presented. Contrary to Plaintiffs' assertion, the question in the case was not whether the plaintiff had a right to sue the state, but whether there were grounds for the declaratory relief sought with regard to the particular *statute* at issue. This case provides no due process analysis applicable in the case at bar, as Plaintiffs are neither seeking declaratory relief nor property deprivation damages.

Similarly *Saunders v. State*, 70 Nev. 480, 273 P.2d 970 (1954), involved real property rights secured by Article I, §8, the deprivation of which requires just compensation as set forth in the plain language of the Article. Eminent domain proceedings, governed by NRS Chapter 37, are the statutory mechanism for enforcement of this constitutional right. The case at bar involves neither eminent domain issues, nor a property right deprivation.

Marynenum v. Nevada State Banking Board, 53 Nev. 333, 111 P. 295 (1910) arose from a constitutional challenge to the Nevada Banking Act, citing Nevada State Constitution Article

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I, §1 in its creation of the right to acquire and protect property. The case came to the Court on a petition for a writ of mandate to compel the Nevada State Banking Board to issue a license permitting the plaintiff to individually engage in banking. The Court concluded the Banking Act was unconstitutional and declared it invalid. The petitioner was not awarded damages. By contrast Plaintiffs at bar cite to no Nevada statute alleged to be unconstitutional in its application, and instead of seeking a constitutional interpretation, seek damages.

In 1910, in *State v. Preble*, 18 Nev. 251, 2 P. 754 (1910), the issue, considered on an application for a writ of mandamus, was whether a citizen of China, who was resident in the State of Nevada, was entitled to purchase public lands belonging to the State under the Nevada Constitution, Article I, §16. The Court opined therein that it is not within the power of the Legislature to limit a right provided by the Constitution and directed the state land register to receive the petitioner's application to purchase certain state lands. Again, this was not an action for damages alleged to result from an undefined constitutional violation.

City of Fernley v. State Dept. of Taxation, 132 Nev. 32, 366 P.2d 699 (2016), was an action between the City and State concerning whether the Local Government Tax Distribution Account was unconstitutional under the state constitutional provision prohibiting the Legislature from passing local or special laws for assessment and collection of taxes. The suit sought declaratory and injunctive relief. Any claim for money damages was abandoned on the appeal. *See* footnote 4, pp. 40 and 705. Nothing in this case supports Plaintiffs' claim at bar for damages resulting from an alleged Constitutional violation.

Ransdell v. Clark County, 124 Nev. 847, 192 P.3d 756 (2013) was, again, an action asserting, in part, an unconstitutional deprivation of property. The plaintiff sought damages related to nuisance abatement by the County. In addition to tort damages under NRS Chapter 41, plaintiff sought damages for constitutional violations of equal protection and procedural due process. The plaintiff's state tort claims were dismissed on sovereign/discretionary immunity grounds – not yet raised in the case at bar and not before this Court on these Defendants' Motion to Dismiss. The plaintiff's constitutional claims were also dismissed in *Ransdell* because the

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plaintiff's property had been seized pursuant to lawful warrant. Plaintiffs at bar do not assert a property deprivation absent procedural due process.

Finally, in *City of Sparks v. Sparks Municipal Court*, 129 Nev. 348, 302 P.3d 1118 (2013), the municipal court sought declaratory and injunctive relief pursuant to a petition for writs of mandamus and prohibition, to establish the court's independence from the City. The decision addresses the rights of municipal courts to direct their own administrative and personnel business, without interference of the City government, as governed by express terms of the Nevada Constitution, Article 15 and Article 8. This was not an action by a private citizen seeking damages for an alleged violation of rights protected under the Nevada Constitution, and the decision has no application to Plaintiffs' suit herein seeking personal damages.

Evident by the foregoing, none of the cases cite by Plaintiffs support their claim to constitutional damages herein. Plaintiffs do not seek declaratory or injunctive relief as to application of any Nevada statute. (Plaintiffs' suit is not brought pursuant to nor governed by NRS Chapter 30- the Uniform Act Covering Declaratory Judgments.) Plaintiffs cite no authority for the broadly asserted proposition that Nevada constitutional rights "have always been understood to carry a right to request relief from the courts in Nevada" – a proposition which, if accurate, would not be without legal citation. Plaintiffs' tort claims are governed by NRS Chapter 41 (Actions and Proceedings in Particular Cases Concerning Persons). *see* NRS 41.0305 et seq. Accountability for Defendants' conduct, if in breach of a duty to Plaintiffs, is provided in NRS Chapter 41 through the limited waiver of statutory immunity created by the Nevada Legislature. By contrast, the Nevada Legislature, to date, has not seen fit to create a constitutional tort, nor provide a private right to the damages sought by Plaintiffs herein.

If there is to be a private cause of action for damages under the state constitution in Nevada, the decision should be left to the Legislature, and the Court should defer to them until that time. *See Alexander v. Sandoval*, 532 U.S. 275, 286-87, 121 S. Ct. 1511 (2001), and *Baldonado v. Wynn*, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008), *supra*. Plaintiffs fail to provide any legal authority to support their claim for constitutional damages.

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IV. CONCLUSION

NRCP 12(b)(5) allows the court to eliminate actions that are *fatally flawed in their legal premises and destined to fail*, and thus to spare litigants the burden of unnecessary pretrial and trial activity. *Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys. Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6), the federal analogue to Nev. R. Civ. P. 12(b)(5)). Based on the foregoing, Plaintiffs' Complaint is fatally flawed as to the stated premises, and accordingly the CCSD Defendants reassert their entitlement to the following relief:

1. That all claims by Plaintiff I.D. be dismissed as barred by the statute of limitations; and
2. That Plaintiffs' Sixth Cause of Action asserting violation of the Nevada Constitution be dismissed for failure to state a claim.

DATED this 27th day of July, 2022.

OLSON CANNON GORMLEY & STOBERSKI

By: /s/ James R. Olson

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EXHIBIT LIST

Exhibit "A" – *Peterson v. Bruen*, 106 Nev. 271, 792 P.2d 18 (1990)

Exhibit "B" – NRS 11.215 Statutory Changes: 1991, 1993, 2009, 2017, and 2021

Exhibit "C" – Legislative Counsel Bureau Summary of Legislation, Nevada Legislature Sixty-Sixth Session 1991, A.B. 219 Re: NRS 11.215

CERTIFICATE OF SERVICE

On the 27 day of July, 2022, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D., AND PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5), on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following:

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Exhibit A

KeyCite Yellow Flag - Negative Treatment
Disagreed With by Herndon v. Graham, Fla.App. 1 Dist., April 14, 1998

106 Nev. 271
Supreme Court of Nevada.

Tor PETERSEN, Appellant,
v.
Ned BRUEN, Respondent.

No. 19878.

May 10, 1990.

Synopsis
Plaintiff in personal injury action seeking to recover damages for child sexual abuse appealed from order of the Ninth Judicial District Court, Douglas County, Norman C. Robison, J., which dismissed the action as time barred. The Supreme Court, Steffen, J., held that no existing statute of limitations applies to bar the action of an adult survivor of child 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 defendant.

Reversed and remanded.

Rose, J., filed an opinion concurring in the result.

Springer, J., filed an opinion concurring in part and dissenting in part.

West Headnotes (5)

[1] **Limitation of Actions** — Causes of action in general

General rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and the party sustains injury for which relief could be sought.

84 Cases that cite this headnote

[2] **Limitation of Actions** — In general; what constitutes discovery

Exception to the general rule that cause of action accrues for limitations purposes when the wrong occurs and party sustains injury is recognized in the "discovery rule," under which the period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action.

117 Cases that cite this headnote

[3] **Limitation of Actions** — In general; what constitutes discovery

Rationale behind the discovery rule is that the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries.

86 Cases that cite this headnote

[4] **Limitation of Actions** — Injuries to the Person

No existing statute of limitations applies to bar the action of an adult survivor of child sexual abuse (CSA) when it is shown by clear and convincing evidence that the plaintiff has in fact been sexually abused during the minority by the named defendant; absent such evidence, cause of action based upon allegations of child sexual abuse will be subject to the regular two-year period of limitations. N.R.S. 11.190, subd. 4(e).

24 Cases that cite this headnote

[5] **Limitation of Actions**—Limitation as affected by nature or form of remedy in general

At common-law, there was no fixed period of time that limited an aggrieved party's right to maintain an action.

Attorneys and Law Firms

****18 *271** Manoukian, Scarpello & Alling and Jeff E. Packer, Carson City, for appellant.

Perry, Hebert & Spann and Thierry V. Barkley, Reno, for respondent.

*272 OPINION

STEFFEN, Justice:

The district court dismissed appellant Tor Petersen's complaint on the ground that it was time-barred by the statute of limitations. Petersen, seeking damages for injuries resulting from child sexual abuse (CSA), contends that the lower court erred in refusing to apply the "discovery rule" to ****19** toll the running of the statutory period. Convinced that Petersen is entitled to maintain his action, we reverse.

Facts

Petersen was sexually abused by respondent, Ned Bruen, during the period from 1975 to 1983 when, under the auspices of the Big Brothers program, Bruen was assigned as a "big brother" to Petersen. The record reflects that Petersen, the "little brother," was approximately seven years old when the abuse commenced. Bruen exploited his relationship of trust with Petersen by seducing him and committing various acts of sexual battery upon his young victim. Bruen also memorialized his depravity by taking photographs of Petersen before, during and after Bruen's sexual trysts with his victim.

Petersen first sought help with his emotional and psychological problems in November of 1987, when he commenced psychotherapy. *273 In the process of counseling with his psychiatrist, Petersen decided to apprise law enforcement officers of Bruen's criminal behavior. As a result of Petersen's disclosures and a subsequent investigation, Bruen was eventually convicted of sexual assault, attempted sexual assault, lewdness with a minor under the age of fourteen, use of a minor in producing pornography, and possession of child pornography.

Petersen filed a civil action against Bruen on July 20, 1988, claiming that he first realized the causal connection between Bruen's sexual impositions and his emotional and mental problems during his psychiatric treatment. Petersen's allegations against Bruen consisted of causes of action for battery and negligent and intentional infliction of emotional distress. In an affidavit submitted in opposition to Bruen's motion to dismiss, Petersen averred that he had blocked out the eight years of sexual molestations by Bruen until vividly recalled during his therapy. Petersen further recalled consenting to Bruen's overtures, not considering the acts offensive at the time, and suffering no physical injury from his encounters with Bruen.

The district court determined that Nevada's two-year period of limitations applied and dismissed Petersen's complaint. According to the record, Bruen last molested Petersen in 1983, approximately five years before Petersen filed his action. Petersen insists that the district court erred in dismissing his complaint because he did not discover the nexus between Bruen's behavior and his emotional distress until 1987. Having filed his complaint in July 1988, Petersen argues that his action was timely.

Discussion

This appeal presents issues of first impression in Nevada. The narrow issue on appeal is whether the district court properly applied the statute of limitations to the facts of Petersen's case. NRS 11.190(4)(e) expressly declares that civil actions must be commenced within two years "for

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injuries to a person ... caused by the wrongful act ... of another."

In resolving the issue before us, it is necessary to consider the purposes served by statutes of limitation. Justice Holmes succinctly stated that the primary purpose of such statutes is to "[prevent] surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 348-349, 64 S.Ct. 582, 586, 88 L.Ed. 788 (1944). Although statutes of limitation are generally adopted for the benefit of individuals rather than public policy concerns, *Kyle v. Green Acres at Pecos, Inc.*, 98 N.J. 100, 207 A.2d 513, 519 (1965), it has been stated that:

> *274 Viewed broadly, ... statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. Thus, statutes of limitation rest upon reasons of sound public policy in that they tend to promote the peace and welfare of society, safeguard against fraud and oppression, and compel the settlement of claims within a reasonable period after their origin and while **20 the evidence remains fresh in the memory of the witnesses.

51 Am.Jur.2d *Limitation of Actions* § 18 (1970) (footnotes and citations omitted).

Finally, it has been observed that "[s]tatutes of limitation find their justification in necessity and convenience rather than logic, and it has been said that they represent expediency rather than principles." *Id.* at § 19, p. 603 (citing *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945)).

In [1] The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought. *Nelson v. A.H. Robbins Co.*, 518 F.Supp. 823, 825 (N.D.Cal.1981). An exception to the general rule has been recognized by this court and many others in the form of the so-called "discovery rule." Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action. *See, e.g., Dunlap v. Pavlikowski*, 94 Nev. 440, 443-444, 581 P.2d 851, 853-854 (1978) (in legal malpractice action, cause of action accrues when plaintiff sustains damage and discovers, or should discover, his cause of action); *Bowen v. United States*, 522 F.Supp. 918, 940-941 (D.Nev.1981) ("Plaintiff who relies upon the delayed discovery rule must plead facts justifying delayed accrual of his action. The complaint must allege: (1) the time and manner of discovery, and (2) the circumstances excusing delayed discovery."), *aff'd*, 734 F.2d 1368 (9th Cir.1984); *Fidler v. Eastman Kodak Co.*, 714 F.2d 192 (1st Cir.1983); *Raymond v. Bell Life & Cas.*, 113 N.H. 104, 431 A.2d 170 (1977).

[2] The rationale behind the discovery rule is that the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries. Plaintiffs *275 should be put on notice before their claims are barred by the passage of time. *See Fidler*, 714 F.2d at 198.

Jurisdictions that have considered the discovery rule in the context of adult survivors of CSA have reached differing conclusions. The Wisconsin Court of Appeals balanced the policies of the discovery rule and the statute of limitations when determining whether the discovery rule should apply to cases of incestuous abuse. In *Hammer v. Hammer*, 142 Wis.2d 257, 418 N.W.2d 23 (Wis.Ct.App.1987), *rev. denied*, 139 Wis.2d 963, 428 N.W.2d 552 (1988), the court held "as a matter of law, that a cause of action for incestuous abuse will not accrue until the victims discover, or in the exercise of reasonable diligence should have discovered, the fact and cause of the injury." *Id.* 418 N.W.2d at 26. In *Hammer*, the adult survivor of childhood sexual abuse did not understand the past and present impact of the sexual abuse until she sought psychiatric help. The court adopted the discovery rule for incest cases and remanded the case to determine whether the discovery rule was applicable to the victim. The court rejected the argument from the alleged abuser that the statute of limitations' protection was being eroded and defendants would be subject to meritless claims for alleged wrongdoing from many years past. In rejecting the argument, the court noted that to protect the adult sexual abuser at the expense of the child is an "intolerable perversion of justice." *Id.* at 27. The court reached this determination by balancing the victim's and the defendant's interests and concluding that "the injustice of barring meritorious claims before the claimant knows of the injury outweighs the threat of stale or fraudulent actions." *Id.*

On the other hand, Washington courts have decided that the discovery rule did not apply to cases similar to *Hammer*. **21 *Tyson v. Tyson*, 107 Wash.2d 72, 727 P.2d 226 (1986). Although the *Tyson* ruling has been superseded by statute, the opinion has been cited by *276 both Petersen and Bruen for the different viewpoints expressed by the majority and dissent. In *Tyson*, the

Washington Supreme Court concluded that the discovery rule "should be adopted only when the risk of stale claims is outweighed by the unfairness of precluding justified causes of action." *Tyson*, 727 P.2d at 328. The court stated that it has previously applied the discovery rule in non-sexual abuse cases where there was objective, verifiable evidence of the original wrongful act and the resulting injury. Because there was no such evidence in *Tyson*, the court did not apply the discovery rule to the sexual abuse victim. *Id.* at 329.

Petersen argues that *Tyson* can be reconciled with the case at bar. He asserts that Bruen's criminal convictions, based upon the sexual abuse Petersen suffered, serve as an "objective manifestation" of Petersen's injuries. We agree that the concerns regarding objective evidence are satisfied by Bruen's convictions.

Courts in California and Montana have held that the discovery rule does not apply when the victims knew of the factual elements of their cause of action long before the statute of limitations ran. *See, e.g., DeRose v. Carswell*, 196 Cal.App.3d 1011, 242 Cal.Rptr. 308 (1987); *K.P. v. D.C.H.*, 231 Mont. 481, 754 P.2d 817 (1988).

The case of *Meyer Pest v. Schafer*, 170 Mich.App. 124, 427 N.W.2d 606 (1988), involved facts similar to those in the present action. The plaintiff filed an action against the defendant arising out of the sexual acts committed by the defendant which resulted in emotional harm to the plaintiff. The defendant admitted committing the sexual acts, thus there was no stale claim concern because of the objective evidence of the abuse. Furthermore, the Michigan Court of Appeals adopted a two-prong test when determining whether to allow the discovery rule to toll the statute of limitations in sexual abuse cases:

> (a) a plaintiff can make out a case that she has repressed the memory of the facts upon which her claim is predicated, such that she could not have been aware of the rights she was otherwise bound to know, and (b) there is corroboration for plaintiff's testimony that the sexual assault occurred.

Id. 427 N.W.2d at 610.

Turning again to NRS 11.190(4)(e) and its application in Petersen's complaint, we first observe that this court has long recognized that:

> In order to reach the intention of the legislature, courts are not bound to always take the words of a statute either in their literal or ordinary sense, if by so doing it would lead to any absurdity or manifest injustice, but may in such cases modify, enlarge, or extend the meaning of the words, so as to **277* meet the plain, evident policy and purview of the act, and bring it within the intention which the legislature had in view *at the time it was enacted* (emphasis added).

Excelle v. Mack, 43 Nev. 172, 176, 183 P. 387, 389 (1919) (quoting *Ex Parte Siebenthaler*, 14 Nev. 165, 169 (1879)); *Sun and Tillman v. Mercer*, 5 Nev. 383 (1869). The pertinent language of NRS 11.190(4)(e) was first enacted in Nevada in 1951. In reviewing the database of reported Nevada cases since the year 1945, the first case involving CSA appears in the year 1964. Since 1964, and through 1989, there have been a total of thirty-eight such reported cases, all of which were criminal, and twenty-four of which were decided since 1980. It is logical to infer from the foregoing statistics that ***22* criminal prosecutions in Nevada involving CSA have greatly increased during the last two decades. It is also logical to conclude that the Legislature did not specifically contemplate CSA within the "wrongful acts" terminology of the statute when it was enacted in 1951.

We think it is safe to assume that the attitudes and policies reflected by our statute of limitations were formulated without concern for the comparatively recent and growing public cognition of CSA and its long-term effects. To this day, the issue evokes a plethora of problems stemming from such factors as the age of child-victims, lack of witnesses, frequent lack of physical evidence, victim defense mechanisms, prosecutorial inexperience, imprecise and controversial investigative and therapy methodology, parental responses and involvement, tension between an accused's right of confrontation and compounding the extent and duration of trauma to the child-victim, hysteria, length and adversarial nature of judicial proceedings, and fear. Although the foregoing factors and others unspecified primarily impact the complexity of criminal prosecutions, they also affect, in varying degrees and duration, the quality of life of the victims, whether exposed to the criminal justice system or not.

The question thus becomes whether the policies favoring the non-intrusibility of stale claims should prevail in situations involving adult survivors of CSA. Obviously, the fact that a claim is based upon allegations of CSA does not eliminate or diminish concerns about fraudulent and oppressive claims; nor does it render evidentiary problems resulting from delay less important. On the other hand, where, as here, the *fact* of CSA is clearly and convincingly shown, we find it difficult to place the plight of the abuser in a position of preeminence over that of the victim irrespective of delay. Different survivors of CSA are beset with such crippling symptoms as guilt, anxiety, embarrassment, **278* depression, and fear over protected

periods of time.[7] As indicated by the lack of civil actions in Nevada seeking redress against [**23] perpetrators of CSA, many survivors of such abuse will complete life's struggle without ever attempting to call their tormentors to account. Others may continue to survive with their fingers in the dike until the pressure becomes too great to bear and they are compelled to find help.

In those instances where the *fact* of abuse is clearly and convincingly corroborated, we perceive no compelling need or policy which justifies the interception of a period of limitations to eliminate the right of CSA victims to seek recovery against their [*279] abusers, irrespective of delay or the time of discovery of the causal connection between the abuse and the injury. In these limited instances where proof of the abuse has not been obscured by the passage of time, the delay can hardly be a source of significant prejudice or disadvantage to abusers. It appears likely that the longer an abuser can defer accountability and enjoy the accrual and use of assets unencumbered by the claims of a victim, the better from the abuser's perspective. Conversely, in many cases, the lives of CSA survivors progressively deteriorate to the point where individual coping is no longer possible or tolerable. We do not agree with the proposition that CSA victims who have avoided litigation or exposure for extended periods should be sacrificed for a policy disfavoring stale claims or the disturbance of abusers who have grown accustomed to living free of concern over an eventual day of reckoning with their victims.

Moreover, in these unique cases where clear and convincing proof of CSA exists, adoption of the discovery rule would produce some untoward, if not bizarre, possibilities. First, in unmeritorious instances, the complex of emotions burdening victims may be exacerbated by forcing them to prematurely confront their abusers in order to preserve their prospects for redress. Second, a victim's suffering may be intensified by the realization that his or her failure to timely muster the will or the courage to seek relief from the abuser has left the latter forever immune from civil accountability. Third, it is reasonable to assume that certain victims, when informed of the discovery rule, will add to their inner turmoil by dissembling in order to avoid the bar of the statute. Fourth, under the discovery rule, the CSA victim will be subjected to the ultimate irony of having to demonstrate his or her [*280] integrity in claiming the benefit of the rule. The thrust of the action will shift from the actions of the abuser and the injuries of the victim to matters of proof concerning the victim's allegations regarding either the actual date and circumstances of discovery or worse yet, the time when the victim reasonably should have discovered that the abuser's conduct was the source of his or her emotional and mental distress.

Although we do not suggest that Petersen has disembarked in his effort to secure passage through the barrier of the statute, the sworn allegations of his affidavit are illustrative of the irony of his position. By averring that he had blocked from his memory the incidents involving Bruen until recall was achieved in the course of therapy, Petersen has sought to place himself within the ambit of the discovery rule. Moreover, he seeks to buttress the believability [**24] of his period of forgetfulness by alleging that he did not perceive the acts to be offensive at the time of their occurrence, that he consented thereto and was not physically injured as a result. In other words, at the time of Bruen's perfidy, Petersen was not sufficiently traumatized or impressed with the wrongfulness of the acts to make their repression particularly difficult.

The spectacle thus produced by the discovery rule is one of dansinogrification, with the victim trying to convince the trier of fact that he has not now become an abuser of truth as an expedient to achieve requital against his former tormentor. And, because proof of discovery in these types of cases must depend in large measure on an inexact science dealing with the psyche, an anticipated shootout of expert opinion will add a further dimension and obstacle to the victim's attempt to reach first base.

We readily concede that in other instances where the discovery rule is applied, the burden shifts to the plaintiff to prove the time and method of discovering the injury. In many such cases, however, objective evidence exists to help meet the burden. In cases of CSA survivors, virtually the only means of sustaining the burden is to convince the trier of fact that the plaintiff's memories repressed the acts of abuse or their deleterious effects over a certain period of time. The fact that a CSA survivor may have been mentally and emotionally incapable of asserting his or her claim within the statutory period would have no relevance under the discovery rule.

Unlike almost all other complainants subjected to statutes of limitation, child victims of sexual abuse suffer from a form of personal intrusion on their mental and emotional makeup that interferes with normal emotional and personality development. [*281] As a result, the adverse effects of such abuse may perceptibly increase for prolonged periods, if not an entire lifetime. And, although physical trauma and injury present in other torts may result in a gradual physical deterioration with concomitant emotional distress, such actions usually are not complicated by the stigma, fear and depression associated with CSA.

In short, adult survivors of CSA present unique circumstances and injuries that do not readily conform to the usual constructs upon which periods of limitations are imposed. In a sense, such survivors are analogous to victims of false imprisonment, where each new day of confinement creates a new cause of action. Unfortunately, however, CSA survivors are hostage to their own thought processes, implanted by their abusers, and from which they may never be totally released. Indeed, the mental and emotional dysfunction suffered by such victims may virtually prevent them from seeking relief against their tormentors until the period of limitations has long since expired. To place the passage of time in a position of priority and importance over the plight of CSA victims would seem to be the ultimate exaltation of form over substance, convenience over principle.

[4] [5] Based upon the foregoing, we hold that no existing statute of limitations **25 applies to bar the action of an adult survivor of CSA when it is shown by clear and convincing evidence that the plaintiff has in fact been sexually abused during minority by the named defendant. Absent such evidence, a cause of action based *282 upon allegations of CSA will be subject to the regular two-year period of limitations specified currently under NRS 11.190(4)(e).

We recognize that injustice may result from our ruling in instances where CSA has occurred but cannot be demonstrated by corroborative evidence that is clear and convincing. We are persuaded, however, that the potential for fraudulent claims is sufficiently great to warrant such a ruling, at least until such time as the legislature may elect to provide a period of limitations directly addressing this specific problem. Because CSA will most often occur under circumstances which are difficult to prove, we would encourage the legislature to enact legislation designed to provide the maximum opportunity for justice in these most difficult types of cases.[1]

Conclusion

For reasons hereinbefore stated we conclude that Petersen demonstrated by the requisite showing of clear and convincing evidence that he was in fact sexually abused as a child and that Bruen was his abuser. Therefore, the district court erred in dismissing Petersen's complaint. The judgment is reversed and the matter remanded for trial.

YOUNG, C.J., and MOWBRAY, J., concur.

ROSE, Justice, concurring:

I concur in the result reached in the majority opinion. However, I would prefer to adopt a rule that tolls the running of the statute of limitations until the discovery of the cause of the victim's psychological problems as has been done in cases from other jurisdictions such as *Hammer v. Hammer*, 142 Wis.2d 257, 418 N.W.2d 25 (Wis.Ct.App.1987), rev. *denied*, 144 Wis.2d 953, 428 N.W.2d 552 (1988), and *Meiers-Post v. Schaffer*, 170 Mich.App. 174, 427 N.W.2d 606 (1988), or until the victim can psychologically address his child sexual assault (CSA) and assert it publicly. Since Petersen's discovery of the causal connection between his psychological problems and the CSA occurred in 1987 and his complaint was filed in July, 1988, the lower court may well find that this action was timely filed if the running of the statute of limitations is tolled until the discovery of the cause of the injury. The lower court could also find that sufficient evidence supports a claim that Mr. Petersen could not psychologically confront and make public the prior CSA until shortly before the complaint was filed. Neither *283 factual determination has been made in this case. I would also apply the tolling of the statute of limitations as stated in all CSA cases, whether the assault was established by clear and convincing evidence or simply by a preponderance of the evidence.

The majority opinion is very persuasive in advocating the elimination of the statute of limitations in all CSA cases where the assault can be established by clear and convincing evidence. However, I would defer the decision on the actual adoption of that position, to this or a later case, until this court is presented with a child sexual assault case that is determined to be barred by the statute of limitations even after application of the above stated rules.

SPRINGER, Justice, concurring and dissenting:

I agree with the majority opinion that a "discovery" rule in these kinds of cases is unrealistic. I disagree, however, with the **26 majority's attempt to annul the statute of limitations in civil cases arising out of child sex abuse cases. I dissent from the majority opinion in this regard and, therefore, from the decision to reverse.

The legislature may choose to eliminate the statute of limitations with respect to child abuse cases. I do not think that the court should be making these kinds of major policy decisions. I find the reasoning in support of doing away with the statute of limitations to be hard to follow and a bit convoluted.

All Citations

106 Nev. 271, 792 P.2d 18

Footnotes

1 *Johnson v. Johnson*, 701 F.Supp. 1963 (N.D.Ill.1988); *Meiers-Post v. Schafer*, 170 Mich.App. 114, 427 N.W.2d 894 (1988); *E.W. v. D.C.H.*, 231 Mont. 481, 754 P.2d 811 (Mont.1988); *Tyson v. Tyson*, 107 Wash.2d 72, 727 P.2d 226 (1986); *Hammer v. Hathaway*, 418 N.W.2d 24 (Wis.Ct.App.1987), *rev. denied*, 144 Wis.2d 951, 428 N.W.2d 552 (1988).

2 *See also Kaiser v. Williamson*, 50 Wash.App. 295, 748 P.2d 1130 (1988); *Raymond v. Ingram*, 47 Wash.App. 701, 737 P.2d 310 (1987).

3 The statute superseding *Tyson* states that:

> [A]ll claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within three years of the act alleged to have caused the injury or condition, or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever expires later.

West's RCW A 9.44.040 (1988) (amending RCW 4.16.340 and adding a new section to RCW 4.16).

4 In a summary of the long-term effects of CSA, it was noted that:

> Empirical studies with adults confirm many of the long-term effects of sexual abuse mentioned in the clinical literature. Adult women victimized as children are more likely to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. Difficulty in trusting others and sexual maladjustment ... has (sic) also been reported by empirical researchers.

See D. Finkelhor, A Sourcebook on Child Sexual Abuse, at 162–63 (1986).

Another research paper, McLeer, Susan V. et al. Post-Traumatic Stress Disorder in Sexually Abused Children, Journal of American Academy of Child and Adolescent Psychiatry 1988, 27, 5:650–54, reported that studies on the impact of CSA reveal that "46 to 66% of sexually abused children demonstrate significant and severe symptoms ... Forty to eighty percent of these symptoms are related to anxiety and its associated manifestations of autonomic hyperarousal, avoidant behaviors, and re-experiencing phenomenon ... symptoms that constitute partial criteria for DSM-III-R [Diagnostic and Statistical Manual (DSM–III–R), American Psychiatric Society, Washington, D.C., 1989] post-traumatic stress disorder (PTSD)." *Id.* at 650. The interviews of CSA victims upon which this study was based were scored according to a checklist with three subcategories of symptoms developed from DSM–III–R criteria for PTSD: "(1) *re-experiencing behavior*, including repetitive talking about the abuse, repetitive play, flashbacks, nightmares, inappropriate sexual activity or talking, and fear of places, people, and things that were viewed as symbolic of the abuse; (2) *avoidant behaviors*, including avoidance of people, places, and things associated with the abuse, an unwillingness to talk about the abuse, nil, or limited memory of the abuse, decreased concentration, and lack of interest in activities; and (3) symptoms of *autonomic hyperarousal*, including difficulty falling asleep or staying asleep, irritability, anger and/or aggressive behavior, distractibility, hyperalert, anxious, or startle reactions, and physiological changes." *Id.* at 651–52. The study concluded that 48.4% of the abused subjects met DSM–III–R criteria for PTSD. *Id.* at 652. Finally, the paper noted that other studies indicate that "[a]dult survivors of CSA have demonstrated more symptoms and dysfunction than normal controls, with symptoms clustering in three areas: anxiety and its associate behaviors, depression and associated lowered self-esteem, social and sexual dysfunction ..." *Id.* at 650. Continuing, the article observed

that "(s)everal investigators have noted that some of these symptom clusters fit DSM–III–R criteria for PTSD, and these data suggest that women may have unremitting PTSD symptoms for years after the experience of CSA...." *Id.*

3 In a report reflecting a basic consensus between psychiatrists and psychologists reviewing all relevant data for diagnostic purposes, symptoms identified as characteristic of post-traumatic stress disorder included: depression and anxiety, a sense of a foreshortened future, psychic numbing, conscious and pervasive fear, recurrent nightmares and hypervigilence. The report also observed that

> Symptoms usually begin immediately or soon after the trauma. Reexperiencing symptoms may develop after a latency period of months or years following the trauma, though avoidance symptoms have usually been present during this period.
>
> Impairment may be either mild or severe and affect nearly every aspect of life. Phobic avoidance of situations or activities resembling or symbolizing the original trauma may interfere with interpersonal relationships such as marriage or family life. Emotional liability, depression, and guilt may result in self defeating behavior or suicidal actions. Psychoactive Substance Use Disorders are common complications.

Diagnostic and Statistical Manual (DSM–III–R), American Psychiatric Society, Washington, D.C., 1989, pp. 248, 249.

4 In a study involving the development of post-traumatic stress disorder in ten children reportedly sexually abused in a day-care setting, it was observed that "(p)roblems with personal-social relationships appeared to be a pervasive area of difficulty." The paper also noted that "(o)n the Minnesota Child Development Inventory, the children were found to be functioning in the lower 10% of children their age in personal-social development." The study also stated that the fearfulness present in the children "appeared to represent collapse of developmental accomplishment." Kiser, Laurel J. et al. Post–Traumatic Stress Disorder in Young Children: A Reaction to Purported Sexual Abuse, Journal of American Academy of Child and Adolescent Psychiatry, 1988, 27, 5:645–649.

Moreover, in the article by McLeer, et al. (see footnote 4), it was concluded that "(i)t may well be that sexually abused children with PTSD are at risk for symptom and/or disorder persistence, perhaps even from childhood into adulthood." *Id.* at 653.

5 At common law there was no fixed period of time that limited an aggrieved party's right to maintain an action. See, *generally*, 51 Am.Jur.2d, *Limitation of Actions* § 1 (1970); 54 C.J.S. *Limitations of Actions* § 1 (1987). As observed previously, we feel assured that the legislature did not contemplate or consider the unique aspects of CSA cases in fixing general periods and categories of limitations.

6 We are confident that the legislature will take such measures as it may deem advisable to address the instant ruling if it determines that demonstrated survivors of CSA should be limited in the time within which enforceable actions may be pursued.

7 For example, the legislature may determine that alleged victims of CSA who do not have clear and convincing evidence of the fact of their abuse should nevertheless be entitled to the benefit of the discovery rule. The Washington statute cited in footnote 3 above is an example of a statute that would provide such a benefit.

End of Document

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Exhibit B

Assembly Bill No. 219–Committee on Judiciary

CHAPTER 58

AN ACT relating to limitation of actions; expanding the period of limitation for a cause of action for damages for injuries caused by sexual abuse which occurred when the plaintiff was a minor; and providing other matters properly relating thereto.

[Approved April 8, 1991]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 11 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 3 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse, whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 2. NRS 11.190 is hereby amended to read as follows:

11.190 Actions other than those for the recovery of real property, unless further limited by specific statute, can only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining

Assembly Bill No. 68 — Committee on Judiciary

CHAPTER 143

AN ACT relating to the limitation of civil actions; extending the time in which an action for damages for injury arising from the sexual abuse of a minor may be commenced; and providing other matters properly relating thereto.

[Approved May 13, 1993]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. **NRS 11.215** is hereby amended to read as follows:

11.215 1. An action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within [3] *10* years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse, whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

—

Senate Bill No. 291 — Committee on Judiciary

CHAPTER 212

AN ACT relating to victims of crime; extending the period of limitation on certain actions by a victim of a felony; repealing the statutory requirement that a portion of money and property gained by an offender from certain sources based on his notoriety be paid into the fund for the compensation of victims of crime; and providing other matters properly relating thereto.

[Approved June 10, 1993]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 217 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A victim may commence any action specified in NRS 11.190, 11.215 or 207.470 which arises from the commission of a felony, against the person who committed the felony within 5 years after the time the person who committed the felony becomes legally entitled to receive proceeds for any contribution to any material that is based upon or substantially related to the felony which was perpetrated against the victim.

2. If the limitation period established in NRS 11.190, 11.215 or 207.520 has otherwise expired, the liability of the person committing the felony to a victim imposed under this section must be limited to the value of the proceeds received by the person who committed the felony for any contribution to material that is based upon or substantially related to the felony which was perpetrated against the victim.

3. For purposes of this section:

(a) "Material" means a book, magazine or newspaper article, movie, film, videotape, sound recording, interview or appearance on a television or radio station and live presentations of any kind.

(b) "Proceeds" includes money, royalties, real property and any other consideration.

(c) "Victim" means any person:

(1) Against whom a crime has been committed;

(2) Who has been injured or killed as a direct result of the commission of a crime; or

(3) Who is the surviving spouse, a parent or a child of such a person.

Sec. 4. NRS 11.215 is hereby amended to read as follows:

11.215 1. [An] *Except as otherwise provided in section 1 of this act, an* action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 3 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse, whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 5. **Section 1 of Assembly Bill No. 68 of this session** is hereby amended to read as follows:

Section 1. NRS 11.215 is hereby amended to read as follows:

11.215 1. Except as otherwise provided in section 1 of [this act,] *Senate Bill No. 291 of this session,* an action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within [3] *10* years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse, whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 6. **NRS 217.265** is hereby repealed.

Sec. 7. This act becomes effective upon passage and approval.

Assembly Bill No. 88–Committee on Judiciary

CHAPTER 471

AN ACT relating to sexual offenses; prohibiting a person from using the Internet to control child pornography; establishing a civil remedy under certain circumstances for a person who appeared in child pornography; providing a penalty; and providing other matters properly relating thereto.

[Approved: June 8, 2009]

Legislative Counsel's Digest:

Section 1 of this bill prohibits a person from using the Internet to control child pornography.

Section 4 of this bill establishes a civil cause of action for a person who, while under the age of 16 years, appeared in child pornography and suffered personal or psychological injury as the result. A person who prevails in such an action may recover his actual damages, which are deemed to be at least $150,000, plus attorney's fees and costs. **Section 3** of this bill establishes the statute of limitations for such an action.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 200 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any person who, knowingly, willfully and with the specific intent to view any film, photograph or other visual presentation depicting a person under the age of 16 years engaging in or simulating sexual conduct, uses the Internet to control such a film, photograph or other visual presentation is guilty of:

(a) For the first offense, a category C felony and shall be punished as provided in NRS 193.130.

(b) For any subsequent offense, a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than $5,000.

2. As used in this section, "sexual conduct" means sexual intercourse, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

Sec. 2. NRS 200.700 is hereby amended to read as follows:

200.700 As used in NRS 200.700 to 200.760, inclusive, *and section 1 of this act,* unless the context otherwise ~~[provides:]~~ *requires:*

1. "Performance" means any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation.

2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.

3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.

4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.

Sec. 3. NRS 11.215 is hereby amended to read as follows:

11.215 1. Except as otherwise provided in *subsection 2 and* NRS 217.007, an action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 10 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse,

➥ whichever occurs later.

2. An action to recover damages pursuant to section 4 of this act must be commenced within 3 years after the occurrence of the following, whichever is later:

(a) The court enters a verdict in a related criminal case; or

(b) The victim reaches the age of 18 years.

3. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 4. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Any person who, while under the age of 16 years, appeared in any film, photograph or other visual presentation engaging in sexual conduct and who suffered personal or psychological injury as a result may bring an action against any person who, while over the age of 18 years, knowingly and willfully:

(a) Promoted the film, photograph or other visual presentation;

(b) Possessed the film, photograph or other visual presentation; or

(c) Used the Internet to control the film, photograph or other visual presentation, with the specific intent to view the film, photograph or other visual presentation.

2. A plaintiff who prevails in an action brought pursuant to this section may recover his actual damages, which shall be deemed to be at least $150,000, plus attorney's fees and costs.

3. A plaintiff may request to use a pseudonym instead of his name in all court proceedings and records related to an action brought pursuant to this section. Upon notification that a plaintiff has requested to use a pseudonym, the court shall ensure that the pseudonym is used in all court proceedings and records.

4. It is not a defense to a cause of action under this section that a defendant did not know the plaintiff or did not engage in the sexual conduct with the plaintiff.

Assembly Bill No. 145–Assemblymen Krasner, Bustamante Adams; Bilbray-Axelrod, Carrillo, Joiner, Kramer, Titus, Tolles, Watkins, Wheeler and Woodbury

Joint Sponsors: Senators Denis; Cannizzaro, Gansert, Gustavson, Harris and Kieckhefer

CHAPTER 111

[Approved: May 24, 2017]

AN ACT relating to civil actions; extending the statute of limitations for certain civil actions for damages to a person for injuries incurred as a child as a result of sexual abuse or pornography; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill extends the time by which a civil action to recover damages arising from the sexual abuse of a person who is less than 18 years of age must be commenced from 10 years to 20 years after the person reaches 18 years of age or discovers or should have discovered that an injury was caused by the sexual abuse, whichever is later. This bill also extends the time by which a civil action to recover damages arising from the appearance of a person who is less than 16 years of age in pornographic material must be commenced from 3 years to 20 years after the person reaches 18 years of age or after a court enters a verdict in a related criminal case, whichever is later.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. **NRS 11.215** is hereby amended to read as follows:

11.215 1. Except as otherwise provided in subsection 2 and NRS 217.007, an action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within [~~10~~] *20* years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his or her injury was caused by the sexual abuse, whichever occurs later.

2. An action to recover damages pursuant to NRS 41.1396 must be commenced within [~~3~~] *20* years after the occurrence of the following, whichever is later:

(a) The court enters a verdict in a related criminal case; or

(b) The victim reaches the age of 18 years.

3. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 2. The period of limitations on actions set forth in NRS 11.215, as amended by section 1 of this act:

1. Applies to a cause of action that accrued before the effective date of this act, if the applicable period of limitations has commenced but not yet expired on the effective date of this act.

2. Must not be construed to revive any claim barred by a period of limitations.

Sec. 3. This act becomes effective upon passage and approval.

Senate Bill No. 203–Senators Dondero Loop; Cannizzaro, Donate, D. Harris, Neal, Ohrenschall, Ratti, Scheible and Spearman

Joint Sponsor: Assemblywoman Krasner

CHAPTER 288

[Approved: June 2, 2021]

AN ACT relating to civil actions; revising provisions relating to civil actions involving certain sexual offenses; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a civil action to recover damages for sexual abuse that occurred when the plaintiff was less than 18 years of age must be commenced within 20 years after either of the following occurs, whichever is later: (1) the plaintiff reaches 18 years of age; or (2) the plaintiff discovers or reasonably should have discovered that his or her injury was caused by the sexual abuse. Existing law also provides that a civil action to recover damages for injuries suffered by a victim of pornography involving minors must be commenced within 20 years after either of the following occurs, whichever is later: (1) the court enters a verdict in *a related criminal case; or (2) the victim reaches the age of 18 years.* (NRS 11.215) ***Section 1** of this bill eliminates the statute of* limitations for a civil action to recover damages for: (1) sexual abuse or sexual exploitation if the sexual abuse or sexual exploitation occurred when the plaintiff was less than 18 years of age; and (2) injuries suffered by a victim of pornography involving minors.

Existing law provides that a criminal conviction of a defendant for the injury alleged in a civil action is conclusive evidence of all facts necessary to impose civil liability on the defendant. (NRS 41.133) **Section 2** of this bill provides that if a plaintiff is the victim of sexual abuse or sexual exploitation, a person has been convicted of a crime arising out of such sexual abuse or sexual exploitation and the plaintiff commences a civil action against a person other than the person convicted of the crime, then the judgment of conviction of the person convicted of the crime is conclusive evidence in the civil action that the person sexually abused or sexually exploited the plaintiff. **Section 2** also provides that a person is liable to a plaintiff for damages if the person knowingly benefits from a venture that the person knew or should have known has engaged in sexual abuse or sexual exploitation of another person. Finally, **section 2** provides that if a person who is liable to a plaintiff knowingly participated in and gained a benefit from or covered up the sexual abuse or sexual exploitation of the plaintiff, the person is liable for treble damages. The statute of limitations for bringing a civil action pursuant to **section 2** is set forth in **section 1**.

Section 3 of this bill makes conforming changes by removing references to the statutes of limitations that were eliminated by this bill.

Section 4 of this bill provides that the changes in this bill apply retroactively to any act constituting sexual abuse or sexual exploitation, any act relating to pornography and a minor and any act described in **section 2** for which a person would be liable even if the statute of limitations that was in effect at the time of the act has expired, which means that a civil action that would otherwise be time-barred by the former statute of limitations is revived by this bill.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. **NRS 11.215** is hereby amended to read as follows:

11.215 1. [~~Except as otherwise provided in subsection 2 and NRS 217.007, an~~] *An* action to recover damages for an injury to a person arising from the sexual abuse *or sexual exploitation* of the plaintiff which occurred when the plaintiff was less than 18 years of age [~~must~~] *may* be commenced [~~within 20 years after the plaintiff:~~

~~(a) Reaches 18 years of age; or~~

~~(b) Discovers or reasonably should have discovered that his or her injury was caused by the sexual abuse, ⇒ whichever occurs later.]~~ *against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff at any time after the sexual abuse or sexual exploitation occurred. In such an action, if the alleged injury to the plaintiff is the result of a series of two or more acts constituting sexual abuse or sexual exploitation, the plaintiff is not required to identify which specific act in the series of acts caused the alleged injury.*

2. An action to recover damages pursuant to NRS 41.1396 ~~[must]~~ *may* be commenced ~~[within 20 years after the occurrence of the following, whichever is later:~~

~~(a) The court enters a verdict in a related criminal case; or~~

~~(b) The victim reaches the age of 18 years.]~~ *at any time.*

3. *An action to recover damages pursuant to section 2 of this act must be commenced within 20 years after the plaintiff reaches 18 years of age.*

4. As used in this section ~~[, "sexual]~~ *:*

(a) "Sexual abuse" has the meaning ascribed to it in NRS 432B.100.

(b) "Sexual exploitation" has the meaning ascribed to it in NRS 432B.110.

Sec. 2. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a plaintiff is the victim of sexual abuse or sexual exploitation, a person has been convicted of a crime arising out of such sexual abuse or sexual exploitation of the plaintiff and the plaintiff commences a civil action against a person other than the person convicted of the crime, then the judgment of conviction of the person convicted of the crime is conclusive evidence in the civil action that the person convicted of the crime sexually abused or sexually exploited the plaintiff.

2. A person is liable to a plaintiff for damages if the person knowingly benefits, financially or by receiving anything of tangible value, from participation in a venture which that person knew or should have known has engaged in sexual abuse or sexual exploitation of another person.

3. A person who is liable to a plaintiff under subsection 2 and who knowingly participated in and gained a benefit from or covered up the sexual abuse or sexual exploitation of the plaintiff is liable to the plaintiff for treble damages.

4. For the purposes of this section, a hotel, motel or other establishment with more than 175 rooms available for sleeping accommodations for the public shall be deemed not to benefit, or to have gained a benefit, from the rental of a room.

.....

Exhibit C

N E L I S

DETAIL LISTING
FROM FIRST TO LAST STEP

TODAY'S DATE: Oct. 22, 1991
TIME : 8:52 am
LEG. DAY IS: 115
PAGE : 1 OF 1

1991

AB 219 By Judiciary SEXUAL ABUSE OF CHILD

Expands period of limitation for cause of action for damages for injury caused by sexual abuse which occurred when plaintiff was minor. (BDR 2-32)

Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

01/24	4	Read first time. Referred to Committee on Judiciary. To printer.
01/25	5	From printer. To committee.
01/25	5	Dates discussed in committee: 3/7 (A&DP)
03/11	26	From committee: Amend, and do pass as amended.
03/11	26	(Amendment number 166.)
03/12	27	Read second time. Amended. To printer.
03/13	28	From printer. To engrossment.
03/13	28	Engrossed. First reprint
03/14	29	Taken from General File. Placed on General File for next legislative day.
03/15	30	Taken from General File. Placed on General File for next legislative day.
03/18	31	Read third time. Passed, as amended. Title approved. (40 Yeas, 0 Nays, 2 Absent, 0 Excused, 0 Not Voting.) To Senate.
03/19	32	In Senate.
03/19	32	Read first time. Referred to Committee on Judiciary. To committee.
03/19	32	Dates discussed in Committee: 3/26 (DP)
03/26	37	From committee: Do pass.
03/27	38	Read second time.
03/28	39	Read third time. Passed. Title approved. (21 Yeas, 0 Nays, 0 Absent, 0 Excused, 0 Not Voting.) To Assembly.
04/01	40	In Assembly.
04/01	40	To enrollment.
04/02	41	Enrolled and delivered to Governor.
04/08	45	Approved by the Governor.
04/09	46	Chapter 58. Effective October 1, 1991.

(* = instrument from prior session)

N E V A D A L E G I S L A T U R E

SIXTY-SIXTH SESSION

1991

S U M M A R Y O F L E G I S L A T I O N

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

A.B. 219 (Chapter 58)
Assembly Bill 219 allows a plaintiff to file an action to recover damages for an injury arising from sexual abuse upon the later of the two following circumstances:

1. The action is commenced within 3 years after the plaintiff reaches 18 years of age; or

2. The action is commenced within 3 years after the plaintiff discovers, or reasonably should have discovered, that his injury was caused by the sexual abuse.

The previous statute of limitation was not reasonable in cases where a plaintiff was very young at the time of abuse, or when an individual, due to the traumatic nature of the abuse, repressed memories of an incident and was not able to fully remember what happened. In addition, many other states have adopted a similar "discovery rule" for sexual abuse cases.

ASSEMBLY BILL NO. 219—COMMITTEE ON JUDICIARY

JANUARY 24, 1991

Referred to Committee on Judiciary

SUMMARY—Expands period of limitation for cause of action for damages for injury caused by sexual abuse which occurred when plaintiff was minor. (BDR 2-32)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to limitation of actions; expanding the period of limitation for a cause of action for damages for injuries caused by sexual abuse which occurred when the plaintiff was a minor; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 11 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 2 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse,

whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 2. NRS 11.190 is hereby amended to read as follows:

11.190 Actions other than those for the recovery of real property, unless further limited by specific statute, can only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

MTS 0085

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without his fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.545 for damages sustained by a financial institution because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the state, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) [An] *Except as otherwise provided in section 1 of this act, an* action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other

personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 3. The provisions of this act apply to a cause of action filed:

1. On or after October 1, 1991, including any cause of action which would be barred by the application of the period of limitation applicable before October 1, 1991; and

2. Before October 1, 1991, and pending on October 1, 1991.

(30)

5

Following roll call, Mr. Sader opened the meeting with AB 219.

ASSEMBLY BILL 219 - Expands period of limitation for cause of action for damages for injury caused by sexual abuse which occurred when plaintiff was minor.

Mr. Sader outlined for the committee the history of and necessity for AB 219. He explained Section 1 of the bill addressed a statute of limitations for time to file a civil action for sexual abuse as a child. Present Nevada law, under Nevada Revised Statutes 11.190(4)(e), held a civil suit must be filed within 2 years of when the act occurred. Mr. Sader commented most victims of sexual abuse were young girls who averaged 8 years of age. AB 219 included a discovery rule providing the action must be brought within 2 years of the victim reaching 18 years of age, or within 2 years of when that person discovered or reasonably should have discovered her injury was caused by sexual abuse, whichever occurred later. He gave rationale to the committee to substantiate the appropriateness of a discovery rule for child sexual abuse cases.

Many legislatures and state supreme courts had worked on legislation for child sexual abuse. In Washington, Montana, Maine, Alaska, Iowa, Colorado and California statutes were recently changed to allow victims of sexual abuse to bring a civil cause of action against the abuser a certain number of years after the discovery of the injury. Most states, like Nevada, have had the standard rule that all these actions must be brought a set number of years after occurrence.

Mr. Sader stated the need for a discovery rule in sexual abuse cases, such as AB 219, was illustrated in handouts presented to the committee. He referenced a letter from Kelly & Patti Barton (Exhibit C); a legal Opinion from the Nevada Supreme Court and a copy of its Decision in Petersen v. Bruen, (Exhibit D); Background Information on Legislative Hearings in the State of Washington (Exhibit E); a list of the voting records on similar legislation in other states (Exhibit F); and read excerpts from a Memorandum in Support of Legislation used in the State of Washington (Exhibit G). Mr. Sader remarked children often rationalized that sexual abuse was their own fault and repressed the experience to the point of total amnesia. The experience frequently led to maladjustment as an adult, self-image problems, and problems with interpersonal relationships. Many victims ended up in therapy and discovered

long after adulthood that they were abused as a child. By that time, however, they had no legal recourse under current laws.

Mr. Sader related the personal story of Patti Barton that led to her crusade to get child sexual abuse laws changed in all states. He pointed out the case of Petersen v. Bruen, from the Nevada Supreme Court, (Exhibit D), wherein the court decided in May, 1990, the strict statute of limitations in Nevada should not apply at all if the victim could prove by clear and convincing evidence that she had been abused. Therefore, Nevada no longer had a statute of limitations for child sexual abuse, but there remained in the law a very high standard of proof. Mr. Sader commented the Bartons and their legal counsel, agreed it was better to meet a statute of limitations after discovery of the injury, than to require a standard of proof so high it was often impossible to prove because of the nature of the case. AB 219 provided a two year discovery rule after the age of 18, or after the discovery of the injury.

To questions from the committee, Mr. Sader commented because the abuse usually happened in the victim's home by a trusted family member, the victim could not be expected to bring an action until she was emancipated and economically able to get away from her family. Mr. Anderson commented the State of Maine had a 3 year statute of limitations and questioned whether 2 years after the age of majority was time enough for the victim to financially and emotionally be able to face a lawsuit of this nature. Mr. Sader mentioned 2 years was selected because the statute of limitations for other injuries to persons was 2 years in Nevada.

Mr. Bayley expressed his interest in this subject area, and believed the normal reaction was to suppress the knowledge, which was different than amnesia, which might create a problem with proof of when the discovery was made. Mr. Sader stated those situations would undoubtedly create an argument between counsel and psychological consultants over when the injury should have been reasonably discovered.

Ms. Paula Treat, on behalf of the Police Officers Research Association of Nevada, and as a member of the board of directors of the Child and Family Institute which dealt with child sexual abuse, testified in support of AB 219. She agreed with Mr. Anderson that there could be problems with the 2 year statute of limitations, informing the committee the State of Washington was trying to

remove all statutory limitations for these actions which would treat them the same as murder.

Mr. Thom Reilly, Deputy Administrator of the State Welfare Division, testified in support of AB 219 as written. He explained the division was the child welfare and foster care agency of the state. Many children served by the division were victims of childhood sexual abuse. Frequently young children were not fully aware of the impact of sexual victimization until later in life when faced with the demands of adulthood. Studies were now being reported that claimed male childhood sexual abuse was as prevalent as was female. The division had encountered many youth who later realized the personal damage they endured as victims of sexual abuse. These individuals often lacked the basic resources to survive, let alone to obtain much needed counseling and consider bringing a lawsuit. In Nevada, even though children were expected to be on their own by 18 years of age, many still returned to the division's social workers or to the foster family because they had no other real family. Mr. Reilly stressed AB 219 would open the door for all victims of childhood sexual abuse to recover damages from those who abused them, and might provide an important source of funding to pay for counseling and other services necessary to assist them in their recovery.

There being no further testimony, Mr. Sader closed the hearing on AB 219.

ASSEMBLY BILL 61 - Establishes additional penalty for felony committed on school grounds or at activity sponsored by school.

Mr. Tod Young, Chief Deputy of the State Public Defender's Office, testified in opposition to AB 61. He stated the bill did not specify that school must be in session or that children be present at the time a crime was committed, and therefore it did not accomplish its intent of protecting children. Crimes committed on school grounds even after school or during summer vacations would still be subject to additional penalties. Mr. Young felt there were other ways of better protecting children, such as providing an additional penalty for a person using a child to commit a crime or a person endangering a child in the commitment of a crime. Furthermore AB 61 would add to the problem of escalating costs for prisons and would diminish the discretion of judges charged with the responsibility for sentencing.

develop cases for prosecution. AB 330 designated the Attorney General the principal prosecutor, but also gave the Attorney General the authority to bring in other prosecutorial agencies when necessary. Registration provisions were tightened to remove loopholes utilized by unscrupulous promoters of penny stocks.

Mr. Griffin commented page 7 of the handout included a change not currently found in AB 330, deleting language in Section 3 as well as the words "by regulation or order" appearing in Section 3(b). The change was to eliminate confusion in allowing the administrator to grant a securities offering by notice rather than by regulation or order, which was a more involved and lengthy process. He asked the committee to adopt that amendment to the bill.

Mr. Paul R. Michaelson, Director of Registration and Licensing for the Securities Division, testifying on Section 7 of AB 330, page 12 of the handout, said the bill would delete a portion of uniform language that was confusing and detracted from the pertinent issues. The reference to the nongovernmental industrial commercial enterprise had been confusing. Mr. Michaelson also pointed out changes in Section 8, page 17 of the handout, which tightened provisions for qualifying for nonissuer transactions under the manual exemptions that might be afforded by the administrator. He stated those were the only portions of the bill which changed or departed from uniform language used in the originally adopted securities act. The heart of the changes in the securities act was to eliminate the possibility that penny stock companies and development stage companies that were in financial difficulties and/or bankruptcy did not reach the manual listing exemptions and thus avoided the basic registration scrutiny they would otherwise have. Mr. Michaelson referenced another change in Section 3, page 3, paragraph 7, which was designed to allow notification of expiration of a license for failure to pay a fee in lieu of having to get an order issued.

There being no further testimony, Mr. Sader closed the hearing on AB 330.

The committee briefly discussed the time period for the statute of limitations in AB 219.

ASSEMBLYMAN ANDERSON MADE A MOTION TO AMEND AB 219 WITH A 3 YEAR STATUTE OF LIMITATIONS AND DO PASS.

ASSEMBLYMAN PETRAK SECONDED THE MOTION.

THE MOTION TO AMEND AB 219 WITH A 3 YEAR STATUTE OF LIMITATIONS AND DO PASS CARRIED UNANIMOUSLY. ASSEMBLYMEN PORTER AND CARPENTER WERE ABSENT.

Mr. Sader asked Mr. Bayley to handle the floor statement for AB 219.

* * *

Regarding AB 358, the committee discussed the potential of a substantial fiscal note being attached to the bill.

ASSEMBLYMAN NORTON MADE A MOTION TO AMEND AB 358 AND REREFER TO WAYS AND MEANS.

ASSEMBLYMAN JOHNSON SECONDED THE MOTION.

THE MOTION TO AMEND AB 358 AND REREFER TO WAYS AND MEANS CARRIED UNANIMOUSLY. ASSEMBLYMAN PORTER WAS ABSENT.

* * *

ASSEMBLYMAN JOHNSON MADE A MOTION TO AMEND AND DO PASS AB 330.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION TO AMEND AND DO PASS AB 330 CARRIED UNANIMOUSLY. ASSEMBLYMAN PORTER WAS ABSENT.

Mr. Sader appointed Mr. Johnson to read the floor statement on AB 330.

* * *

Mr. Sader informed the committee that while meeting in Las Vegas they had voted to amend and do pass AB 60 based on his and Mr. Porter's erroneous recollection of the testimony. He recommended the committee rescind its motion to amend and do pass AB 60 and bring a motion to do pass.

ASSEMBLYMAN SCHERER MADE A MOTION TO RESCIND THE COMMITTEE ACTION TO AMEND AND DO PASS AB 60.

Kelly & Patti Barton
P.O. Box 7651
Everett, WA 98201
206-435-4790

February 2, 1990

Assemblyman Robert M. Sader

Capital Complex
Carson City, Nevada 89701

Re: Extending Civil Statute for Adult Survivors of Child Sexual Abuse

Dear Assemblyman Sader,

We wanted to share some strategies that have worked in other states in passing this legislation. We realize that each state is different and that you know your state better than we do.

Alaska: Survivors also met with the legislators prior to the Committee hearings. The sponsor of the bill sent the bill out to Psychologists, Counselors, and Lawyers involved in the field of child sexual abuse. The sponsor of the bill had good response and resulted in a number of people to testify in favor of the bill. Testifying were 2 Survivors, 1 Psychologist to present clinical evidence and a number of Professionals from various Sexual Assault Centers. There was no opposition to the bill. Alaska passed both Houses with only 1 vote against.

California: An attorney in the child abuse field has been working hard on this bill. Unfortunately critics have used this to label the legislation as an attorney's bill and have watered it down a little. It looks like this bill will probably pass, however; it might have been easier if the focus had remained on the needs of the survivors.

Montana: We're not real knowlegable about their strategy but from what we do know they seemed to have a survivor who was willing to speak out on the bill. We do not know the vote on the legislation, however: it did pass.

Washington State: A survivor and her spouse went to the capital prior to the hearings and personally met with over half the legislators on each committee. In the hearings there was testimony from 3 Survivors, 1 Psychologist to present clinical evidence, 1 Lawyer with experience in the child abuse field, the Chairman of the Washington Association of Prosecuting Attorneys and a lobbyist for the Washington Coalition of Sexual Assault Centers. There was no opposition to the bill. Washington passed both Houses unanimously.

We hope this information is useful to you. If there's anything we can do to help please feel free to let us know. (We'd be willing to teleconference if your state allows it).

Wishing You Success,

Kelly & Patti Barton

719

Kelly & Patti Barton

EXHIBIT C11

APPROVED
JUN 14 '89
BY GOVERNOR

CHAPTER
292
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

H.P. 202 - L.D. 282

An Act to Modify the Statute of Limitations in Sexual Abuse of Minors Cases

Be it enacted by the People of the State of Maine as follows:

14 MRSA §752-C, as enacted by PL 1985, c. 343, §1, is amended to read:

§752-C. Sexual acts towards minors

Actions based upon sexual intercourse or a sexual act, as defined in Title 17-A, chapter 11, with a person under the age of majority shall be commenced within 6 years after the cause of action accrues, or within 3 years of the time the person discovers or reasonably should have discovered the harm, whichever occurs later.

Montana

1935; Sec. 93-2602, R.C.M. 1947; Ap. p. Sec. 510, C. Civ. Proc. 1895; re-en. Sec. 6443, Rev. C. 1907; re-en. Sec. 9027, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 335; re-en. Sec. 9027, R.C.M. 1935; Sec. 93-2601, R.C.M. 1947; R.C.M. 1947, 93-2601(part), 93-2602(2).

27-2-215. Renumbered 27-2-231 by Code Commissioner, 1989.

27-2-216. Tort actions — childhood sexual abuse. (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section.

History: En. Sec. 2, Ch. 158, L. 1989.

Compiler's Comments

Retroactive Applicability: Section 5, Ch. 158, L. 1989, provided: "[This act] applies to all causes of action commenced on or after October 1, 1989, regardless of when the cause of action arose. To this extent, [this act] applies retroactively, within the meaning of 1-2-109."

27-2-217 through 27-2-230 reserved.

27-2-231. Other actions. An action for relief not otherwise provided for must be commenced within 5 years after the cause of action accrues.

History: En. Sec. 518, C. Civ. Proc. 1895; re-en. Sec. 6451, Rev. C. 1907; re-en. Sec. 9041, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 343; re-en. Sec. 9041, R.C.M. 1935; R.C.M. 1947, 93-2613; amd. Sec. 20, Ch. 12, L. 1979; Sec. 27-2-215, MCA 1987; redes. 27-2-231 by Code Commissioner, 1989.

Part 3
Accrual of Cause of Action

27-2-301. When demand necessary to perfect right to action. Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends.

History: En. Sec. 551, C. Civ. Proc. 1895; re-en. Sec. 6468, Rev. C. 1907; re-en. Sec. 9058, R.C.M. 1921; re-en. Sec. 9058, R.C.M. 1935; R.C.M. 1947, 93-2712; amd. Sec. 2, Ch. 441, L. 1987.

Effective 7-1-90

Iowa

HOUSE FILE 2268

AN ACT

RELATING TO DISCOVERY AND THE STATUTE OF LIMITATIONS IN A CIVIL ACTION INVOLVING SEXUAL ABUSE, SEXUAL ASSAULT, OR SEXUAL HARASSMENT AND PROVIDING FOR THE ACT'S APPLICABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 668.15, Code Supplement 1989, is amended to read as follows:

668.15 DAMAGES RESULTING FROM SEXUAL ABUSE -- EVIDENCE.

1. In a civil action alleging conduct which constitutes sexual abuse, as defined in section 709.1, sexual assault, or sexual harassment, a party seeking discovery of information concerning the plaintiff's sexual conduct with persons other than the person who committed the alleged act of sexual abuse, as defined in section 709.1, sexual assault, or sexual harassment, must establish specific facts showing good cause for that discovery, and that the information sought is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence.

2. In an action against a person accused of sexual abuse, as defined in section 709.1, sexual assault, or sexual harassment, by an alleged victim of the sexual abuse, sexual assault, or sexual harassment, for damages arising from an injury resulting from the act-of-sexual-abuse alleged conduct, evidence concerning the past sexual behavior of the alleged victim is not admissible.

Sec. 2. NEW SECTION. 614.8A DAMAGES FOR CHILD SEXUAL ABUSE -- TIME LIMITATION.

An action for damages for injury suffered as a result of sexual abuse which occurred when the injured person was a child, but not discovered until after the injured person is of the age of majority, shall be brought within four years from

the time of discovery by the injured party of both the injury and the causal relationship between the injury and the sexual abuse.

Sec. 3.

This Act is applicable to all actions filed on or after the effective date of the Act.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2268, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved _____, 1990

TERRY E. BRANSTAD
Governor

HF 2268

HF 2268

TUESDAY, MAY 31, 1988 THE SPOKESMAN-REVIEW
SPOKANE-REC

Late detection of child abuse covered in law

Like many victims of child abuse, Patti Barton buried deep the traumatic memories of what had been done to her.

Such repression is not rare. Therapists have long documented it as a common defense mechanism that affects — in varying degrees of memory loss — as many as 45 percent of all molested children.

But it is likewise common for those ugly memories to resurface years later in the victim's life.



DOUG CLARK
Columnist

Patti was 32 years old when that happened to her.

As the Everett woman discovered, there was little chance for justice to be done.

The statute of limitations for criminal charges had long since expired. And in 1986, the state Supreme Court quashed an attempt that would have allowed cases like Patti's to be pursued through lawsuits. Such civil litigation, the court ruled 5-4, had to be filed within a three-year time limit that began when the victim turned 18.

As Patti Barton knew, the effects of child abuse don't always accommodate such a schedule. She and her husband, Kelly, decided that the Supreme Court was wrong and the law needed changing.

So Kelly, a bus driver, and Patti, a homemaker, decided to take on the system. And on June 9, less than a year after they began, Senate Bill 6305 will become law.

As bills go, it was a small piece of legislation. But it is also the first of its kind in the nation, a bill sure to spark controversy and have far-ranging consequences for many Washingtonians like Patti Barton.

"It's such a success story, it's just wonderful," said Amy Stephson, legal coordinator for the Seattle-based Northwest Women's Law Center. "In terms of empowering victims it offers a remedy that wasn't there before."

It was the Law Center that added technical expertise to the Bartons' tireless enthusiasm. The union made for a formidable force that garnered bipartisan support and unanimous passage of the bill.

What SB 6305 does is to allow for delayed discovery of child abuse.

When you think about it, such an allowance isn't at all out of line or the least bit unfair.

If an inept surgeon was to leave a sponge inside you, it might take years, even decades, for the mistake to be uncovered. In such cases, the law correctly allows for such a delay in filing a lawsuit.

It is at the point when a person becomes aware of the error that the statute of limitations clock starts ticking. Victims of fraud are also afforded whatever time it takes to realize the swindle.

It is only just and reasonable, then, to extend the same legal courtesy to people like Patti Barton.

Because she was abused by a relative, "I blocked all my memories of it," said Patti. "Now the anger is finally starting to come out. It's been very painful."

Patti is careful not to identify the person whom she said abused her. After all, she added, that person has never been charged with a crime or taken to court.

Not yet, that is

Patti did say that she is exploring the possibility of seeking redress after the new law goes into effect. She would like her abuser to at least have to bear the cost of her counseling sessions.

The Bartons had been married 11 years when Kelly noticed a marked change in his wife. "We had had our normal ups and downs, but we began having more problems," he said. "She was starting to behave differently. We got close to separating."

Patti began seeing a counselor, who helped trigger some of the memories she had hidden for so long. As the truth emerged, Kelly said he was horrified by what had happened to his wife.

"I was just floored," he said. "For three weeks it was all I could think about."

The Bartons called an attorney, who told them they had no legal recourse because of the time limit. "That got me angry," said Patti. "I kept thinking, 'This is America. This can't happen.' "

In mid-June, the Bartons called Rep. Pat Scott, D-Everett, and naively asked her to change the law.

"I thought she could change it mid-session," laughed Patti.

"We didn't know it was supposed to be hard," added Kelly.

But the validity of the Bartons' point didn't go unnoticed, as the Law Center and more and more politicians got involved. The much publicized death of little Eli Creekmore increased the Legislature's sensitivity to child-abuse issues. There was also no organized opposition to what the Bartons were trying to do.

Because of their efforts, Patti was recently given the "Woman of the Year" award by the National Organization for Women's Washington chapter. Even in Spokane, the Bartons' efforts are being applauded.

"There will be a lot of woodwork cases that will come out after this law goes into effect," said Cindy Olson, who last year founded the grass roots organization, Save Children Against Rape.

"And that's good," said Olson. "Getting some restitution for victims can be the real start of the healing process."

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MTS 0097

APRIL 5, 1989

Victim's bill puts abusers 'on notice'

By ANNABEL LUND
THE JUNEAU EMPIRE

Patti Barton was sexually abused by a family member from the time she was 15 months old until she left home at 18 years old, she says. Like many child abuse victims, however, it wasn't until she was 32 and had undergone psychotherapy before she could admit the abuse. Her abuser, like many who sexually assault children, is protected by the statute of limitations and will never have to pay for his crime.

Barton and her husband, Kelly, didn't think that was fair. In 1987, they pioneered a victims' rights law in their home state of Washington – the first of its kind in the country – and have been instrumental in interesting the Alaska Legislature in the legislation. Montana passed such a bill last month.

The Alaska bill, sponsored by Reps. Fran Ulmer, D-Juneau, Peter Goll, D-Haines, and Virginia Collins, R-Anchorage, extends the statute of limitations for civil liability in child sexual assault cases, so that a victim may sue his or her assailant years after the actual abuse takes place.

"That's important because many victims – 45 percent according to national statistics – repress or partially repress memories of early abuse. Often it isn't until victims have gone through psychotherapy that they recognize early abuse and correlate it to the many problems and illnesses they typically exhibit later in life. Some victims don't recognize the abuse or don't realize how it's harmed them. The more severe the abuse the more likely the victim is to block it out," Barton says.

"When I told my therapist what had happened to me as a child, my doctor said 'That's child sexual assault and people go to jail for that nowadays.'" Barton points to a stack of yellow receipts she carries in her notebook. "My therapy cost



MARK KELLEY/JUNEAU EMPIRE

PATTI BARTON

$10,000 and it still isn't over. I thought, "Wouldn't it be fair for my abuser to pay those bills?'"

There was nothing Barton could do, though. At the time, Washington law, like Alaska law, said a lawsuit must be filed two years after the date the act occurred or two years after a victim has reached the age of 21.

The legislation adopted by the Washington legislature in 1987, however, extends the statute of limitations to three years after a victim recognizes the abuse has occurred. The same proposal is now working its way through the committees in the Alaska House. A person bringing such lawsuit would have to verify the abuse occurred, convince a judge and jury of damages and provide the same sorts of proof any court case demands.

"The legislation will empower victims and allow them to make use of the civil system to do something about the situation, emotionally and financially, instead of just feeling guilty or angry," Ulmer says.

The law will put abusers on notice "that we certainly don't want to let the abuser get off scot-free and that even though it's too late for a criminal case, they may be subject to confrontation years down the road," she says.

In Washington, the law passed unanimously. Barton's abuser fled the state a few days before the law took effect. Still, the Bartons say their successful battle to change the law was worth it.

The Bartons are in Juneau to testify before the House Judiciary Committee Thursday afternoon when the legislation is scheduled for a public hearing. Barton has a special reason for wanting Alaska to adopt the legislation: she lived in Alaska for 23 years before moving to Washington and it was in Fairbanks her abuse first began.

"I was born and raised and abused in Alaska, but I can't file suit here. We are doing what we are doing now so other victims don't have to go through what we had to. I also hope victims will be more inclined to sue. It's important for victims to stand up and say "This is what happened to me and it isn't right," she says.

House Bill 238 is scheduled for a public hearing in the House Judiciary Committee at 1:30 p.m. Thursday in Room 120 of the Capitol.

United Press International

ed before takeoff yesterday at Denver's Stapleton International Airport.

Monticello in southern Utah; 17 inches at Flagstaff, Ariz.; and up to 2 feet in the Sierra Nevada in Northern California, the Weather Service said.

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ındidate
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Bonker kicked off his campaign
ıttack not on his rival for the
gan administration.
guided policies of the last seven
to his political base to make his
crowd of about 300 people that the
pending and provided windfall tax
dashing successful programs for
housing."
campaigning for months, made no



Rep. Don Bonker
Starts official campaign

Bill would give abuse victims more time to take legal action

by Mark Matassa
Times Olympia bureau

OLYMPIA REPORT

OLYMPIA — Patti Barton has learned that it's a mixed blessing, at best, discovering through therapy that she was sexually abused as a young girl.

Suddenly, almost 30 years after the assaults she now believes have blackened much of her life, Barton is remembering the pain of her childhood — pain she had subconsciously blocked out over the years.

She says she remembers being "French kissed" as a toddler, abused repeatedly at around age 5 and fondled regularly until she was about 10.

After a year in therapy, Barton's weekly sessions continue with a Lynnwood psychologist. And her grueling catharsis, her purging of long-buried emotions, continues too.

She now credits her recollections with saving her marriage, which had been foundering largely because of her inability to show affection. And she says she now understands for the first time why she was autistic as a girl and struggled through much of her schooling.

But with Barton's self-discovery have come a great deal of anguish, tension and, lately, the desire for some kind of retribution. She says she wants the man she believes abused her to pay the cost of her therapy, which could run to about $15,000.

That person has refused to pay, however, a situation which normally would leave Barton with the

Please see **ABUSE** on A 8

turned: Former IRS chief penalized

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1961-64.
Ruth, owe
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couple's deduction of $446,451 for their claimed share of ordinary losses in a partnership known as Anglo-American Financial. The Caplins describe the partnership as a broker-dealer and market-maker in metals, currencies, securities and commodities.

In denying the deduction, the IRS declares: "It has not been established that the transactions in which the partnership was involved were bona fide . . . transactions at fair market value; that such transactions were entered into for profit; that such transactions had any economic substance other than the avoidance of taxes; or that such transactions actually occurred."

Caplin, after serving as commissioner of the IRS, founded the Washington law firm of Caplin and Drysdale in 1964, and in the years since has has been a prominent tax attorney and frequent congressional witness on tax matters.

Caplin has appealed, asserting that the Anglo-American Financial partnership was a legitimate organization that intended to make a profit.

Court papers showed that the Caplins' original tax return for 1980 reported a tax liability of $152,279; IRS says it should have been $380,989.

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MTS 0099

Victims would get more time

ABUSE

continued from Page 1

option of taking him to court. In this case, however, and in many like it, the victim does not have redress in the legal system because the statute of limitations has run out.

Barton, 34, is among several abuse victims and others testifying today in favor of legislation that would alter the statute of limitations in such cases.

The bill, drafted largely because of Barton's story and her persistent lobbying efforts, would set the statute of limitations in motion at the time the victim realizes he or she had been abused as a child, rather than at the time the victim turns 18.

Under the current law, which was upheld in a 1986 state Supreme Court ruling on a very similar case, victims of childhood sex offenses can bring civil action until they are 21, three years after reaching majority. Criminal charges must be filed before the victim turns 25.

The unsuccessful plaintiff in the 1986 court case, 26-year-old Nancy Tyson, also was to testify in support of the bill. Leslie Owen, executive director of the Northwest Women's Law Center, supports the bill and believes it has a good chance of becoming law.

"Discovery is used in many aspects of tort law, so it's not at all far-fetched," Owen said. "The classic case is medical malpractice. A doctor leaves an instrument of some kind in your stomach. At the time you discover that it's harming you is when the statute of limitations starts to run.

"This is the same," she said. "In case after case after case, we've seen that the victims don't start to deal with their abuse until much later in life."

And, as in Barton's case, victims often subconsciously block out all memory of the abuse. Because the most severe abuse is most likely to be lost in the subconscious, the current law almost encourages abusers to be brutal, says Tyson's Seattle attorney, Barbara Jo Levy.

The standard opposition to such a proposal is that the statute of limitations serves a valid purpose. Memories fade, and the facts become increasingly hard to ascertain after 10 or 15 or 30 years.

To that, Barton says she doesn't want a guarantee or an easy trial, only the opportunity to let a court decide.

Beyond the benefit in personal cases, says Owen, the law also has the greater social value of discouraging sexual abuse in the first place.

"I hope the ultimate effect is a deterrent effect," she says. "I know a sexual abuser doesn't necessarily think about the statute of limitations, but the value is that it's part of the process of developing a whole climate in society that says sexual abuse is not acceptable."

Bonker joins Senate race

SENATE

continued from Page 1

overt reference to the primary showdown he faces with Rep. Mike Lowry of Re[illegible]n. But he did say "we cannot [illegible] divisiveness" in the effort to get a Democrat into

116 survive crash of Soviet airliner in which 11 died

Reuters

MOSCOW — A Soviet Aeroflot airliner missed a runway while attempting to land in Soviet Turkmenia yesterday, overturned and broke in two, killing 11 people, Tass news agency reported.

Twelve people were injured when the TU-154 aircraft on a Moscow-to-Ashkhabad flight crashed while landing for a stop at Krasnovodsk, Soviet Turkmenia. The remaining 104 passengers and all 12 crew members escaped unhurt.

A local official in Krasnovodsk was quoted as saying visibility was clear.

The accident was reported earlier by the evening newspaper Izvestia in a rare same-day account of a Soviet plane crash.

All 108 abo killed in cra

Reuters

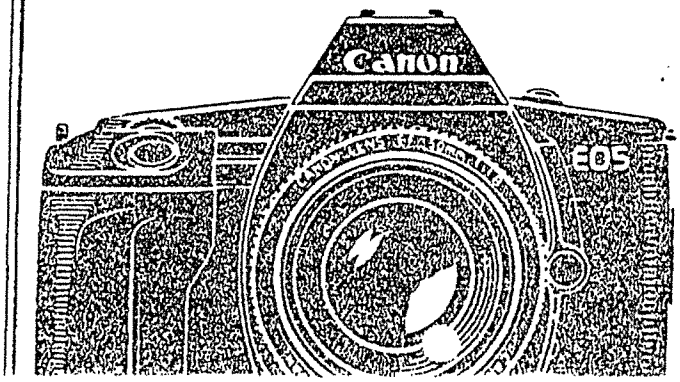
BEIJING — A Chinese crashed last night in south China, killing all 108 p board, the state airline CA

A Civil Aviation Admin of China (CAAC) spokesm the Soviet-built Ilyushin I 98 passengers and 10 cr that four of the victim foreigners — three Japan one Briton.

The plane, bound fro to Chongqing, crashed i from Chongqing's airport p.m., the New China News said.

The area is densely p hilly and often shrouded The airline said it was in ing the cause of the accid

The disaster was the crash in China since Ap when a British-built Chi



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Assemblyman
Washoe No. 32
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Chairman
Judiciary
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Natural Resources
Legislative Functions

Nevada Legislature

SIXTY-FOURTH SESSION

June 12, 1990

Kelly and Patti Barton
Post Office Box 7651
Everett, WA 89201

Re: Extending the Statute of Limitations for Child Sexual Abuse

Dear Mr. and Mrs. Barton:

Enclosed please find a legal opinion from the Nevada Legislative Counsel Bureau, and a recent supreme court decision on the above-referenced subject. The bill draft request is to extend the statute of limitations to two years after discovery or two years after the age of majority, whichever is later. The Nevada Supreme Court decision wipes out the statute of limitations altogether, but requires a very high burden of proof as a threshold decision for the court to decide whether the statute of limitations applies.

One could reason that the supreme court decision on this subject is better than the bill draft request. My personal opinion, however, would be to favor the approach of the bill draft request.

I am transmitting those documents to you for your view on this matter, given the changes now enacted by the Nevada Supreme Court.

Sincerely,

R. M. Sader

ROBERT M. SADER

RMS/ml
Enclosures

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EXHIBIT D 19

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
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John R. Crossley *Director Secretary*

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Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens *Fiscal Analyst*

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LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6830

June 1, 1990

Assemblyman Robert M. Sader
462 Court Street
Reno, Nevada 89501

Dear Mr. Sader:

You have requested a bill draft to extend the statute of limitation for a civil action brought to recover damages for injuries resulting from the sexual abuse of a child. Specifically, you have submitted a proposal which would allow such an action to be brought by the victim within 2 years after he reaches the age of majority or within 2 years after he discovers or reasonably should have discovered that his injuries were caused by the sexual abuse, whichever is later. Since you have submitted this request, the supreme court of the State of Nevada has issued an opinion regarding this area of law which may be of interest to you.

In Peterson v. Bruen, 106 Nev. 44 (1990), the plaintiff brought an action for battery and negligent and intentional infliction of emotional distress alleging that the defendant sexually abused him during the period from 1975 to 1983. The plaintiff filed his action approximately 5 years after the defendant last molested him. The district court dismissed the complaint on the ground that it was barred by the 2-year statute of limitation set forth in NRS 11.190. The plaintiff appealed the district court's decision contending that he did not discover the causal relationship between the defendant's behavior and his emotional distress until 1987, after he had received counseling for his emotional and psychological problems. The supreme court held that the plaintiff was entitled to maintain his action and reversed the decision of the district court.

In resolving the issue, the supreme court found that adults who were sexually abused as children present unique injuries which do not readily conform to the general statutory periods of limitation. Therefore, the court ruled that no existing statute of limitation applies to bar the action of an adult who was sexually abused as a child if it is shown by clear and convincing evidence that the plaintiff was sexually abused during his minority by the defendant. However, absent such evidence, such a cause of action must be brought within 2 years after the plaintiff sustained the injury. In addition, the court found that in these unique cases, the adoption of a rule tolling

the statutory period of limitation until the plaintiff discovered or reasonably should have discovered facts supporting a cause of action would place an unnecessary burden on the victim to present his claim and "produce some untoward, if not bizarre, possibilities." In a concurring opinion, Justice Rose agreed that the current 2-year statute of limitation does not apply, but argued that in all such cases, the running of the period of limitation should be tolled until the discovery of the cause of the victim's injury or until the victim can psychologically address his sexual abuse and deal with it publicly.

Finally, the court observed that the legislature had not contemplated the unique aspects of civil actions involving the sexual abuse of children at the time the general statutory periods of limitation were adopted. Consequently, the court encouraged the legislature to provide a period of limitation directly addressing this problem. As stated by the court in a footnote to its decision:

> We are confident that the legislature will take such measures as it may deem advisable to address the instant ruling if it determines that demonstrated survivors of child sexual abuse should be limited in the time within which enforceable actions may be pursued.

I have enclosed a copy of the supreme court's decision for your review. We will draft for introduction by the Committee on Judiciary a bill addressing this issue as you have requested. If, after reviewing the court's decision, you wish to change the request in any way, please let me know and we will draft the bill accordingly.

Very truly yours,

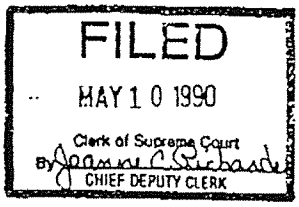
Lorne J. Malkewich
Legislative Counsel

By Jan K. Needham
Principal Deputy
Legislative Counsel

IN THE SUPREME COURT OF THE STATE OF NEVADA

TOR PETERSEN,
Appellant,
vs.
NED BRUEN,
Respondent.

No. 19878



Appeal from district court order dismissing appellant's complaint for failure to file within the applicable period of limitations. Ninth Judicial District Court, Douglas County; Norman C. Robison, Judge.

Reversed and remanded.

Manoukian, Scarpello & Alling and Jeff E. Parker, Carson City,
for Appellant.

Perry, Hebert, & Spann and Thierry V. Barkley, Reno,
for Respondent.

O P I N I O N

By the Court, STEFFEN, J.:

The district court dismissed appellant Tor Petersen's complaint on the ground that it was time-barred by the statute of limitations. Petersen, seeking damages for injuries resulting from child sexual abuse (CSA), contends that the lower court erred in refusing to apply the "discovery rule" to toll the running of the statutory period. Convinced that Petersen is entitled to maintain his action, we reverse.

Facts

Petersen was sexually abused by respondent, Ned Bruen, during the period from 1975 to 1983 when, under the auspices of

the Big Brothers program, Bruen was assigned as a "big brother" to Petersen. The record reflects that Petersen, the "little brother," was approximately seven years old when the abuse commenced. Bruen exploited his relationship of trust with Petersen by seducing him and committing various acts of sexual battery upon his young victim. Bruen also memorialized his depravity by taking photographs of Petersen before, during and after Bruen's sexual trysts with his victim.

Petersen first sought help with his emotional and psychological problems in November of 1987, when he commenced psychotherapy. In the process of counseling with his psychiatrist, Petersen decided to apprise law enforcement officers of Bruen's criminal behavior. As a result of Petersen's disclosures and a subsequent investigation, Bruen was eventually convicted of sexual assault, attempted sexual assault, lewdness with a minor under the age of fourteen, use of a minor in producing pornography, and possession of child pornography.

Petersen filed a civil action against Bruen on July 20, 1988, claiming that he first realized the causal connection between Bruen's sexual impositions and his emotional and mental problems during his psychiatric treatment. Petersen's allegations against Bruen consisted of causes of action for battery and negligent and intentional infliction of emotional distress. In an affidavit submitted in opposition to Bruen's motion to dismiss, Petersen averred that he had blocked out the eight years of sexual molestations by Bruen until vividly recalled during his therapy. Petersen further recalled consenting to Bruen's overtures, not considering the acts offensive at the time, and suffering no physical injury from his encounters with Bruen.

The district court determined that Nevada's two-year period of limitations applied and dismissed Petersen's complaint. According to the record, Bruen last molested Petersen in 1983,

MTS 0105

approximately five years before Petersen filed his action. Petersen insists that the district court erred in dismissing his complaint because he did not discover the nexus between Bruen's behavior and his emotional distress until 1987. Having filed his complaint in July 1988, Petersen argues that his action was timely.

Discussion

This appeal presents issues of first impression in Nevada. The narrow issue on appeal is whether the district court properly applied the statute of limitations to the facts of Petersen's case. NRS 11.190(4)(e) expressly declares that civil actions must be commenced within two years "for injuries to a person . . . caused by the wrongful act . . . of another."

In resolving the issue before us, it is necessary to consider the purposes served by statutes of limitation. Justice Holmes succinctly stated that the primary purpose of such statutes is to "[prevent] surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Telegraphers v. Ry. Express Agency, 321 U.S. 342, 348-349 (1944). Although statutes of limitation are generally adopted for the benefit of individuals rather than public policy concerns, Kyle v. Green Acres at Verona, Inc., 207 A.2d 513, 519 (N.J. 1965), it has been stated that:

> Viewed broadly, . . . statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. Thus, statutes of limitation rest upon reasons of sound public policy in that they tend to promote the peace and welfare of society, safeguard against fraud and oppression, and compel the settlement of claims within a reasonable period after their origin and while the evidence remains fresh in the memory of the witnesses.

51 Am. Jur. 2d Limitation of Actions § 18 (1970) (footnotes and citations omitted).

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24
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Finally, it has been observed that "[s]tatutes of limitation find their justification in necessity and convenience rather than logic, and it has been said that they represent expedience rather than principles." Id. at § 19, p. 603 (citing Chase Secur. Corp. v. Donaldson, 325 U.S. 304 (1945)).

The general rule concerning statutes of limitation is that a cause of action accrues when the wrong occurs and a party sustains injuries for which relief could be sought. Nelson v. A.H. Robbins Co., 515 F. Supp. 623, 625 (N.D. Cal. 1981). An exception to the general rule has been recognized by this court and many others in the form of the so-called "discovery rule." Under the discovery rule, the statutory period of limitations is tolled until the injured party discovers or reasonably should have discovered facts supporting a cause of action. See, e.g., Sorenson v. Pavlikowski, 94 Nev. 440, 443-444, 581 P.2d 851, 853-854 (1978) (in legal malpractice action, cause of action accrues when plaintiff sustains damage and discovers, or should discover, his cause of action); Prescott v. United States, 523 F. Supp. 918, 940-941 (D. Nev. 1981) ("Plaintiff who relies upon this delayed discovery rule must plead facts justifying delayed accrual of his action. The complaint must allege: (1) the time and manner of discovery, and (2) the circumstances excusing delayed discovery."), aff'd, 731 F.2d 1388 (9th Cir. 1984); Fidler v. Eastman Kodak Co., 714 F.2d 192 (1st Cir. 1983); Raymond v. Eli Lily & Co., 371 A.2d 170 (N.H. 1977).

The rationale behind the discovery rule is that the policies served by statutes of limitation do not outweigh the equities reflected in the proposition that plaintiffs should not be foreclosed from judicial remedies before they know that they have been injured and can discover the cause of their injuries. Plaintiffs should be put on notice before their claims are barred by the passage of time. See Fidler, 714 F.2d at 198.

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Jurisdictions that have considered the discovery rule in the context of adult survivors of CSA have reached differing conclusions.[1] The Wisconsin Court of Appeals balanced the policies of the discovery rule and the statute of limitations when determining whether the discovery rule should apply to cases of incestuous abuse. In Hammer v. Hammer, 418 N.W.2d 23 (Wis. Ct. App. 1987), rev. denied, 428 N.W.2d 552 (Wis. 1988), the court held "as a matter of law, that a cause of action for incestuous abuse will not accrue until the victims discover, or in the exercise of reasonable diligence should have discovered, the fact and cause of the injury." Id. at 26. In Hammer, the adult survivor of childhood sexual abuse did not understand the past and present impact of the sexual abuse until she sought psychiatric help. The court adopted the discovery rule for incest cases and remanded the case to determine whether the discovery rule was applicable to the victim. The court rejected the argument from the alleged abuser that the statute of limitations' protection was being eroded and defendants would be subject to meritless claims for alleged wrongdoing from many years past. In rejecting the argument, the court noted that to protect the adult sexual abuser at the expense of the child is an "intolerable perversion of justice." Id. at 27. The court reached this determination by balancing the victim's and the defendant's interests and concluding that "the injustice of barring meritorious claims before the claimant knows of the injury outweighs the threat of stale or fraudulent actions." Id.

On the other hand, Washington courts have decided that

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[1] Johnson v. Johnson, 701 F. Supp. 1363 (N.D. Ill. 1988); Meiers-Post v. Schafer, 427 N.W.2d 606 (Mich. Ct. App. 1988); E. W. v. D. C. H., 754 P.2d 817 (Mont. 1988); Tyson v. Tyson, 727 P.2d 226 (Wash. 1986); Hammer v. Hammer, 418 N.W.2d 23 (Wis. Ct. App. 1987), rev. denied, 428 N.W.2d 552 (Wis. 1988).

the discovery rule did not apply to cases similar to Hammer. Tyson v. Tyson, 727 P.2d 226 (Wash. 1986).[2] Although the Tyson ruling has been superseded by statute,[3] the opinion has been cited by both Petersen and Bruen for the different viewpoints expressed by the majority and dissent. In Tyson, the Washington Supreme Court concluded that the discovery rule "should be adopted only when the risk of stale claims is outweighed by the unfairness of precluding justified causes of action." Tyson, 727 P.2d at 228. The court stated that it has previously applied the discovery rule in non-sexual abuse cases where there was objective, verifiable evidence of the original wrongful act and the resulting injury. Because there was no such evidence in Tyson, the court did not apply the discovery rule to the sexual abuse victim. Id. at 229.

Petersen argues that Tyson can be reconciled with the case at hand. He asserts that Bruen's criminal convictions, based upon the sexual abuse Petersen suffered, serve as an "objective manifestation" of Petersen's injuries. We agree that the concerns regarding objective evidence are satisfied by Bruen's convictions.

Courts in California and Montana have held that the discovery rule does not apply when the victims knew of the factual

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[2] See also Kaiser v. Milliman, 747 P.2d 1130 (Wash. Ct. App. 1988); Raymond v. Ingram, 737 P.2d 314 (Wash. Ct. App. 1987).

[3] The statute superseding Tyson states that

> [A]ll claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within three years of the act alleged to have caused the injury or condition, or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act, whichever expires later.

West's RCWA § 4.16.340 (1988) (amending RCW 4.16.350 and adding a new section to RCW 4.16).

MTS 0109

elements of their cause of action long before the statute of limitations ran. See, e.g., DeRose v. Carswell, 242 Cal. Rptr. 368 (Cal. Ct. App. 1987); E. W. v. D. C. H., 754 P.2d 817 (Mont. 1988).

The case of Meiers-Post v. Schafer, 427 N.W.2d 606 (Mich. Ct. App. 1988), involved facts similar to those in the present action. The plaintiff filed an action against the defendant arising out of the sexual acts committed by the defendant which resulted in emotional harm to the plaintiff. The defendant admitted committing the sexual acts, thus there was no stale claim concern because of the objective evidence of the abuse. Furthermore, the Michigan Court of Appeals adopted a two-prong test when determining whether to allow the discovery rule to toll the statute of limitations in sexual abuse cases:

> (a) a plaintiff can make out a case that she has repressed the memory of the facts upon which her claim is predicated, such that she could not have been aware of the rights she was otherwise bound to know, and (b) there is corroboration for plaintiff's testimony that the sexual assault occurred.

Id. at 610.

Turning again to NRS 11.190(4)(e) and its application to Petersen's complaint, we first observe that this court has long recognized that:

> In order to reach the intention of the legislature, courts are not bound to always take the words of a statute either in their literal or ordinary sense, if by so doing it would lead to any absurdity or manifest injustice, but may in such cases modify, restrict, or extend the meaning of the words, so as to meet the plain, evident policy and purview of the act, and bring it within the intention which the legislature had in view at the time it was enacted (emphasis added).

Escalle v. Mark, 43 Nev. 172, 176, 183 P. 387, 389 (1919) (quoting Ex Parte Siebenhauer, 14 Nev. 365, 369 (1879). See also Gibson v. Mason, 5 Nev. 283 (1869). The pertinent language of NRS

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MTS 0110

11.190(4)(e) was first enacted in Nevada in 1951. In reviewing the database of reported Nevada cases since the year 1945, the first case involving CSA appears in the year 1964. Since 1964, and through 1989, there have been a total of thirty-eight such reported cases, all of which were criminal, and twenty-four of which were decided since 1980. It is logical to infer from the foregoing statistics that criminal prosecutions in Nevada involving CSA have greatly increased during the last two decades. It is also logical to conclude that the Legislature did not specifically contemplate CSA within the "wrongful acts" terminology of the statute when it was enacted in 1951.

We think it is safe to assume that the attitudes and policies reflected by our statute of limitations were formulated without concern for the comparatively recent and growing public cognition of CSA and its long-term effects. To this day, the issue evokes a plethora of problems stemming from such factors as the age of child-victims, lack of witnesses, frequent lack of physical evidence, victim defense mechanisms, prosecutorial inexperience, imprecise and controversial investigative and therapy methodology, parental responses and involvement, tension between an accused's right of confrontation and compounding the extent and duration of trauma to the child-victim, hysteria, length and adversarial nature of judicial proceedings, and fear. Although the foregoing factors and others unspecified primarily impact the complexity of criminal prosecutions, they also affect, in varying degrees and duration, the quality of life of the victims, whether exposed to the criminal justice system or not.

The question thus becomes whether the policies favoring the unenforceability of stale claims should prevail in situations involving adult survivors of CSA. Obviously, the fact that a claim is based upon allegations of CSA does not eliminate or diminish concerns about fraudulent and oppressive claims; nor does

it render evidentiary problems resulting from delay less important. On the other hand, where, as here, the fact of CSA is clearly and convincingly shown, we find it difficult to place the plight of the abuser in a position of preeminence over that of the victim irrespective of delay. Ofttimes survivors of CSA are beset with such crippling symptoms as guilt, anxiety, embarrassment, depression, and fear over protracted periods of time.[4] As indicated by the lack of civil actions in Nevada

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[4] In a summary of the long-term effects of CSA, it was noted that:

> Empirical studies with adults confirm many of the long-term effects of sexual abuse mentioned in the clinical literature. Adult women victimized as children are more likely to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. Difficulty in trusting others and sexual maladjustment . . . has [sic] also been reported by empirical researchers. . . .

See D. Finkelhor, A Sourcebook on Child Sexual Abuse, at 162-63 (1986).

Another research paper, McLeer, Susan V. et al. Post-Traumatic Stress Disorder in Sexually Abused Children, Journal of American Academy of Child and Adolescent Psychiatry 1988, 27, 5:650-54, reported that studies on the impact of CSA reveal that "46 to 66% of sexually abused children demonstrate significant and severe symptoms. . . . Forty to eighty percent of these symptoms are related to anxiety and its associated manifestations of autonomic hyperarousal, avoidant behaviors, and re-experiencing phenomenon . . . symptoms that constitute partial criteria for DSM-III-R [Diagnostic and Statistical Manual (DSM-III-R), American Psychiatric Society, Washington, D.C., 1989] post-traumatic stress disorder (PTSD)." Id. at 650. The interviews of CSA victims upon which this study was based were scored according to a checklist with three subcategories of symptoms developed from DSM-III-R criteria for PTSD: "(1) re-experiencing behavior, including repetitive talking about the abuse, repetitive play, flashbacks, nightmares, inappropriate sexual activity or talking, and fear of places, people, and things that were viewed as symbolic of the abuse; (2) avoidant behaviors, including avoidance of people, places, and things associated with the abuse, an unwillingness to talk about the abuse, no, or limited memory of the abuse, decreased concentration, and lack of interest in activities; and (3) symptoms of autonomic hyperarousal, including difficulty falling asleep or staying asleep, irritability, anger and/or aggressive behavior, distractibility, hyperalert, anxious, or startle reactions, and physiological changes." Id. at 651-52. The study concluded that 48.4% of the abused subjects met DSM-III-R criteria for PTSD. Id. at 652. Finally, the paper noted that other studies indicate that "[a]dult survivors of CSA have demonstrated more symptoms and dysfunction than normal controls,

(continued...)

seeking redress against perpetrators of CSA, many survivors of such abuse will complete life's struggle without ever attempting to call their tormentors to account. Others may continue to survive with their fingers in the dike until the pressure becomes too great to bear and they are compelled to find help.

In those instances where the fact of abuse is clearly and convincingly corroborated, we perceive no compelling need or policy which justifies the intervention of a period of limitations to eliminate the right of CSA victims to seek recovery against their abusers, irrespective of delay or the time of discovery of the causal connection between the abuse and the injury. In these limited instances where proof of the abuse has not been obscured by the passage of time, the delay can hardly be a source of significant prejudice or disadvantage to abusers. It appears likely that the longer an abuser can defer accountability and enjoy the accrual and use of assets unencumbered by the claims of a victim, the better from the abuser's perspective. Conversely, in many cases, the lives of CSA survivors progressively deteriorate to the point where individual coping is no longer possible or tolerable.[5] We do not agree with the

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[4](...continued)
with symptoms clustering in three areas: anxiety and its associate behaviors, depression and associated lowered self-esteem, social and sexual dysfunction. . . ." Id. at 650. Continuing, the article observed that "[s]everal investigators have noted that some of these symptom clusters fit DSM-III-R criteria for PTSD, and these data suggest that women may have unremitting PTSD symptoms for years after the experience of CSA. . . ." Id.

[5] In a report reflecting a basic consensus between psychiatrists and psychologists reviewing all relevant data for diagnostic purposes, symptoms identified as characteristic of post-traumatic stress disorder included: depression and anxiety, a sense of a foreshortened future, psychic numbing, conscious and pervasive fear, recurrent nightmares and hypervigilence. The report also observed that

> Symptoms usually begin immediately or soon after the trauma. Reexperiencing symptoms may develop after a latency period of months or years following the trauma, though avoidance symptoms have usually been

(continued...)

proposition that CSA victims who have avoided litigation or exposure for extended periods should be sacrificed for a policy disfavoring stale claims or the disturbance of abusers who have grown accustomed to living free of concern over an eventual day of reckoning with their victims.

Moreover, in these unique cases where clear and convincing proof of CSA exists, adoption of the discovery rule would produce some untoward, if not bizarre, possibilities. First, in undoubted instances, the complex of emotions burdening victims may be exacerbated by forcing them to prematurely confront their abusers in order to preserve their prospects for redress. Second, a victim's suffering may be intensified by the realization that his or her failure to timely muster the will or the courage to seek relief from the abuser has left the latter forever immune from civil accountability. Third, it is reasonable to assume that certain victims, when informed of the discovery rule, will add to their inner turmoil by dissembling in order to avoid the bar of the statute. Fourth, under the discovery rule, the CSA victim will be subjected to the ultimate irony of having to demonstrate his or her integrity in claiming the benefit of the rule. The thrust of the action will shift from the actions of the abuser and the injuries of the victim to matters of proof concerning the victim's allegations regarding either the actual date and

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[5](...continued)
present during this period.

> Impairment may be either mild or severe and affect nearly every aspect of life. Phobic avoidance of situations or activities resembling or symbolizing the original trauma may interfere with interpersonal relationships such as marriage or family life. Emotional lability, depression, and guilt may result in self-defeating behavior or suicidal actions. Psychoactive Substance Use Disorders are common complications.

Diagnostic and Statistical Manual (DSM-III-R), American Psychiatric Society, Washington, D.C., 1989, pp. 248, 249.

circumstances of discovery or worse yet, the time when the victim reasonably should have discovered that the abuser's conduct was the source of his or her emotional and mental distress.

Although we do not suggest that Petersen has dissembled in his effort to secure passage through the barrier of the statute, the sworn allegations of his affidavit are illustrative of the irony of his position. By averring that he had blocked from his memory the incidents involving Bruen until recall was achieved in the course of therapy, Petersen has sought to place himself within the ambit of the discovery rule. Moreover, he seeks to buttress the believability of his period of forgetfulness by alleging that he did not perceive the acts to be offensive at the time of their occurrence, that he consented thereto and was not physically injured as a result. In other words, at the time of Bruen's perfidy, Petersen was not sufficiently traumatized or impressed with the wrongfulness of the acts to make their repression particularly difficult.

The spectacle thus produced by the discovery rule is one of transmogrification, with the victim trying to convince the trier of fact that he has not now become an abuser of truth as an expedient to achieve requital against his former tormentor. And, because proof of discovery in these types of cases must depend in large measure on an inexact science dealing with the psyche, an anticipated conflict of expert opinion will add a further dimension and obstacle to the victim's attempt to reach first base.

We readily concede that in other instances where the discovery rule is applied, the burden shifts to the plaintiff to prove the time and method of discovering the injury. In many such cases, however, objective evidence exists to help meet the burden. In cases of CSA survivors, virtually the only means of sustaining the burden is to convince the trier of fact that the

plaintiff's mentation repressed the acts of abuse or their deleterious effects over a certain period of time. The fact that a CSA survivor may have been mentally and emotionally incapable of asserting his or her claim within the statutory period would have no relevance under the discovery rule.

Unlike almost all other complainants subjected to statutes of limitation, child victims of sexual abuse suffer from a form of personal intrusion on their mental and emotional makeup that interferes with normal emotional and personality development.[6] As a result, the adverse effects of such abuse may perceptibly increase for prolonged periods, if not an entire lifetime. And, although physical trauma and injury present in other torts may result in a gradual physical deterioration with concomitant emotional distress, such actions usually are not complicated by the stigma, fear and depression associated with CSA.

In short, adult survivors of CSA present unique circumstances and injuries that do not readily conform to the usual constructs upon which periods of limitations are imposed. In a sense, such survivors are analogous to victims of false imprisonment, where each new day of confinement creates a new

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[6] In a study involving the development of post-traumatic stress disorder in ten children reportedly sexually abused in a day-care setting, it was observed that "[p]roblems with personal-social relationships appeared to be a pervasive area of difficulty." The paper also noted that "[o]n the Minnesota Child Development Inventory, the children were found to be functioning in the lower 10% of children their age in personal-social development." The study also stated that the fearfulness present in the children "appeared to represent collapse of developmental accomplishment." Kiser, Laurel J. et al. Post-Traumatic Stress Disorder in Young Children: A Reaction to Purported Sexual Abuse. Journal of American Academy of Child and Adolescent Psychiatry, 1988, 27, 5:645-649.

Moreover, in the article by McLeer, et al. (see footnote 4), it was concluded that "[i]t may well be that sexually abused children with PTSD are at risk for symptom and/or disorder persistence, perhaps even from childhood into adulthood." Id. at 653.

cause of action. Unfortunately, however, CSA survivors are hostage to their own thought processes, implanted by their abusers, and from which they may never be totally released. Indeed, the mental and emotional dysfunction suffered by such victims may virtually prevent them from seeking relief against their tormentors until the period of limitations has long since expired. To place the passage of time in a position of priority and importance over the plight of CSA victims would seem to be the ultimate exaltation of form over substance, convenience over principle.

Based upon the foregoing, we hold that no existing statute of limitations[7] applies to bar the action of an adult survivor of CSA when it is shown by clear and convincing evidence that the plaintiff has in fact been sexually abused during minority by the named defendant.[8] Absent such evidence, a cause of action based upon allegations of CSA will be subject to the regular two-year period of limitations specified currently under NRS 11.190(4)(e).

We recognize that injustice may result from our ruling in instances where CSA has occurred but cannot be demonstrated by corroborative evidence that is clear and convincing. We are persuaded, however, that the potential for fraudulent claims is sufficiently great to warrant such a ruling, at least until such time as the legislature may elect to provide a period of

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[7] At common law there was no fixed period of time that limited an aggrieved party's right to maintain an action. See, generally, 51 Am. Jur. 2d, Limitation of Actions § 1 (1970); 54 C.J.S. Limitations of Actions § 2 (1987). As observed previously, we feel assured that the legislature did not contemplate or consider the unique aspects of CSA cases in fixing general periods and categories of limitations.

[8] We are confident that the legislature will take such measures as it may deem advisable to address the instant ruling if it determines that demonstrated survivors of CSA should be limited in the time within which enforceable actions may be pursued.

limitations directly addressing this specific problem. Because CSA will most often occur under circumstances which are difficult to prove, we would encourage the legislature to enact legislation designed to provide the maximum opportunity for justice in these most difficult types of cases.[9]

Conclusion

For reasons hereinbefore stated, we conclude that Petersen demonstrated by the requisite showing of clear and convincing evidence that he was in fact sexually abused as a child and that Bruen was his abuser. Therefore, the district court erred in dismissing Petersen's complaint. The judgment is reversed and the matter remanded for trial.

Steffen, J.

We concur:

Young, C.J.

Mowbray, J.

[9] For example, the legislature may determine that alleged victims of CSA who do not have clear and convincing evidence of the fact of their abuse should nevertheless be entitled to the benefit of the discovery rule. The Washington statute cited in footnote 3 above is an example of a statute that would provide such a benefit.

ROSE, J., concurring:

I concur in the result reached in the majority opinion. However, I would prefer to adopt a rule that tolls the running of the statute of limitations until the discovery of the cause of the victim's psychological problems as has been done in cases from other jurisdictions such as Hammer v. Hammer, 418 N.W.2d 23 (Wis. Ct. App. 1987), rev. denied, 428 N.W.2d 552 (Wis. 1988), and Meiers-Post v. Schafer, 427 N.W.2d 606 (Mich. Ct. App. 1988); or until the victim can psychologically address his child sexual assault (CSA) and assert it publicly. Since Petersen's discovery of the causal connection between his psychological problems and the CSA occurred in 1987 and his complaint was filed in July, 1988, the lower court may well find that this action was timely filed if the running of the statute of limitations is tolled until the discovery of the cause of the injury. The lower court could also find that sufficient evidence supports a claim that Mr. Petersen could not psychologically confront and make public the prior CSA until shortly before the complaint was filed. Neither factual determination has been made in this case. I would also apply the tolling of the statute of limitations as stated in all CSA cases, whether the assault was established by clear and convincing evidence or simply by a preponderance of the evidence.

The majority opinion is very persuasive in advocating the elimination of the statute of limitations in all CSA cases where the assault can be established by clear and convincing evidence. However, I would defer the decision on the actual adoption of that position, in this or a later case, until the court is presented with a child sexual assault case that is determined to be barred by the statute of limitations even after application of the above stated rules.

Rose, J.

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SPRINGER, J., concurring and dissenting:

I agree with the majority opinion that a "discovery" rule in these kinds of cases is unrealistic. I disagree, however, with the majority's attempt to annul the statute of limitations in civil cases arising out of child sex abuse cases. I dissent from the majority opinion in this regard and, therefore, from the decision to reverse.

The legislature may choose to eliminate the statute of limitations with respect to child abuse cases. I do not think that the court should be making these kinds of major policy decisions. I find the reasoning in support of doing away with the statute of limitations to be hard to follow and a bit contrived.

Springer, J.

MTS 0120

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BACKGROUND INFORMATION
GIVING ADULT VICTIMS OF CHILD SEXUAL ABUSE THEIR DAY IN COURT

Legislative Hearings - 19 January 1988
Senate: 8:00 AM, Hearing Room 6, John A. Cherberg Building
House: 1:30 PM, Hearing Room A, House Office Building

FOR FURTHER INFORMATION CONTACT:

Proposed legislation:	Lonnie Johns-Brown, 754-3290, Olympia Leslie Owen, NW Women's Law Center, 682-9552, Seattle Jana Mohr, NW Women's Law Center, 323-2764, Seattle
Legal information:	Barbara Jo Levy, 622-9050, Seattle
Victim/Survivors:	Patti Barton, Legal Rights for Survivors of Childhood Sexual Abuse, 355-9710, Everett

PRESENT LAW

THE TYSON CASE

The October 30, 1986 decision of the Washington Supreme Court in the case of Tyson v. Tyson placed an insurmountable barrier in the path of adult survivors of child sexual abuse seeking to recover damages from their abusers through our civil court system. In that case, 26 year old Nancy Tyson had brought suit against her father to recover damages for injuries she alleged resulted from sexual abuse that she had not remembered until adulthood. Tyson's attorney Barbara Jo Levy maintained that the statute of limitations on the case should not begin to run until the time of discovery, i.e., Tyson's recovering her memories. Tyson maintained that the abuse she suffered between the ages of three and 11 was blocked from her memory until she began psychotherapy less than a year before she filed suit.

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The Supreme Court ruled, in a 5-4 decision, that the "discovery

-more-

rule" would not apply in cases of child sexual abuse. Without the application of the "discovery rule," Tyson would have had to file her suit within three years of attaining the age of 18, according to the court decision. That is, she would have had to file by the time she reached 21.

THE RAYMOND CASE

The next year, in May, 1987, the State Court of Appeals cited the Tyson case in ruling that the discovery rule would not apply to the case of Raymond v. Ingram. Pamela Raymond had brought suit against her grandparents, alleging that her grandfather had sexually abused her when she was between the ages of four and 17, and that her grandmother had known of the abuse and neglected to prevent it.

Raymond's memories of the abuse were not blocked, nor were her memories of the stomach cramps, sleep disorder and other problems she suffered. However, she maintained that she did not realize the cause and effect relationship between the abuse and the problems until she entered into pyschotherapy. The Court of Appeals supported the trial court in its application of the statute of limitations running from Raymond's age of majority.

Attorneys like Levy report that they continue to receive calls from adult survivors like Tyson and Raymond, but have had to advise them that they have no cause of action, because of the statute of limitations. Under the proposed changes, the statute of limitations would not begin to run until the victim/survivor discovered her injury.

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WHAT ARE THE DAMAGES IN CHILD SEXUAL ABUSE?

Individuals vary widely in their response to the trauma of child sexual abuse. However, practitioners and researchers have been able to identify a constellation of initial and long-term effects of sexual abuse in the 12-15 million American women that the American Psychological Association estimates have suffered incestuous abuse, along with the additional millions that were victim to extra-familial sexual abuse.

INITIAL EFFECTS

Experts in the field have noted a number of the following initial effects, many of which will have consequences that are long-term:

*Sleep and eating disturbances

*Adolescent pregnancy--in one study 11% of the child victims became pregnant as a result of the sexual offense.

*Fears and phobias

*Depression

*Guilt and shame and related lowered sense of self esteem

*Anger and hostility resulting in behavioral disturbances within the family and at school.

*Sexual disturbances, including open masturbation, excessive sexual curiosity, frequent exposure of genitals, and sexual aggression against other children.

*School problems including truancy and quitting school.

*Running away

LONG TERM EFFECTS

The long-term effects of child sexual abuse are sometimes merely a continuation of initial effects. However, recent literature has focused on describing effects that manifest themselves long after the abuse in a Post Traumatic Stress Syndrome. In cases which may be

diagnosed as PTSD symptoms may appear years later that the sufferer may not be able to connect to the original stress--sexual abuse--without professional help.

In addition, life experiences such as marriage, having children, experiencing an adult rape or rape attempt, being close to someone who suffers an adult rape or rape attempt, can bring forth symptoms that can be confusing or terrifying to a victim who thought she had put it all behind her, or one who does not remember her abuse. Some of the effects that may persist into or suddenly appear in adulthood include:

*Depression, including that severe enough to require hospitalization.

*Suicide attempts--A Canadian research team found that 92.9% of mental health center patients who had attempted suicide before the age of 13 were victims of child sexual abuse, as were 87.2% of those whose first attempt occurred in adolescence.

*Nervousness and anxiety, sometimes resulting in sleep disturbance, nightmares, extreme tension and other somatic complaints.

*Eating disorders, including anorexia and bulimia.

*Poor self esteem--In a 1985 study women with poor self esteem were four times as likely to report a history of child sexual abuse as were other subjects.

*Difficulties in interpersonal relations including feelings of isolation, difficulty trusting others, difficulties in parenting including abuse of their own children.

*Vulnerability to revictimization--one study reported that former incest victims were twice as likely to be victims of rape than were those who had not been victimized in childhood. Other studies report a correlation between childhood sexual abuse and being battered in adult relationships.

*Sexual problems ranging from an inability to relax and enjoy sex to a compulsive desire for sex, "promiscuity," and prostitution.

WHY SHOULD THE DISCOVERY RULE BE APPLIED?

There are a number of reasons that a young adult aged 18-21 may not know of the damage done by child sexual abuse. Social scientists estimate that the average age of a victim of child sexual abuse is eight years, with a reported range from birth to age 16. 50-90% of this abuse goes unreported, although reporting rates have improved recently with the introduction of education in the public schools and attention by the mass media.

Even now, though, it is very difficult for a child to report sexual abuse because of threats by the abuser of physical violence, harm to the victim's siblings or mother, threat of abandonment or separation, and other psychologically coercive tactics. In addition, many children are simply too young to be able to communicate effectively about their abuse.

Many children who do report are met with denial on the part of the adult they tell, and more frequently by the adult accused. When a child does tell about abuse and is met with denial or accusation rather than care and protection, that child, as well as the child that cannot tell, must find some way of coping with the trauma, which is often continuing.

REPRESSION OF MEMORIES

One very common way of coping--particularly effective with very young children--is to forget all or part of the abuse. In a clinical study conducted recently in Massachusetts, 64% of the patients did not have full recall of their sexual abuse, whicle 28% reported severe memory repression. For those suffering only partial memory loss, the amnesia is likely to cover the most severe aspects of the abuse. In

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the Massachusetts study, most of the patients who recovered memories in the couse of treatment were able to go back and verify those memories through the recollections of other family members and other means of verification. One woman found a detailed diary of her abuse kept by her abuser.

THE ACCOMMODATION SYNDROME

Another childhood coping response is to deny the injury caused by the abuse. Psychologist Roland Summit has described an "accommodation syndrome," in which the shame, self-blame, and secrecy associated with the abuse inhibit the victim's understanding of its effects. In this process the child assumes reponsibility for the abuse and internalizes her feelings of rage and anxiety, denying the injury.

Since these and other common victim coping responses are likely to mask the effects of child sexual abuse until the victim undergoes treatment by a psychotherapist, the application of the "discovery rule" would enable them to recover damages for their injuries.

THE DISCOVERY RULE

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. The courts have fashioned the "delayed discovery" exception which provides that the statute of limitations does not begin to run until the plaintiff should have discovers or through the use of reasonable diligence should have discovered the cause of action.

The Surgeon General's Northwest Regional Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases in its meeting in

Seattle in September 1987. And Justice Goodloe, concurring in the Tyson decision, wrote: "I believe the arguments of the dissent are most compelling; however, the end result appears to be subjective judicial policy making. This is the exclusive province of the Legislature, and the judiciary must not invade it." [Tyson vs. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986)].

Supporters of these bills ask our legislators to take Justice Goodloe's remarks as a directive and provide for the adult victim/survivors of child sexual abuse an opportunity to take their cases to court and let a jury decide the truth of their claims and the cause and extent of the damage they have suffered.

Application of the "discovery rule" will not only give victims a chance for a hearing, but may also have a chilling effect on the abuser who must then recognize that while he may be able to control a child and keep her from telling, he may have to face the consequences of his actions later when she grows up. It is ironic that it is the effects of his wrongdoing--the trauma caused by the abuse, the repression, the accommodation--that results in his victim's inability to pursue redress through the courts. The "discovery rule" can help to strip away this unfair protection for the abuser and force him to face his accuser when she is an adult and able to stand up for herself.

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Voting Records on Legislation to Extend the Statute Of Limitations for Adult Survivors of Child Sexual Abuse

Alaska 1 against in House unanimous in Senate

California unanimous

Colorado unanimous

Iowa House 90 - 0 Senate 45 - 1

Maine unanimous

Maryland determined through staff analysis

Minnesota unanimous

Montana House 85 - 12 Senate 47 - 1

Missouri part of a major package of bills

Vermont no record kept

Washington unanimous

EXHIBIT F

HB 219

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MEMORANDUM IN SUPPORT OF LEGISLATION APPLYING THE DISCOVERY RULE TO CIVIL SUITS BROUGHT BY ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

I. Purpose of the Legislation

The discovery rule, which states that a statute of limitations does not begin to run until a plaintiff discovers or through the use of reasonable diligence should have discovered that she or he is injured and that the injury was caused by the defendant's misconduct, should be applied to civil suits based on intentional torts brought by adult survivors of childhood sexual abuse.[1]

II. Facts

Childhood sexual abuse is a problem of immense proportion in the United States today. The American Psychological Association estimates that 12 million to 15 million women in the United States have suffered incestuous abuse, and that about one-half of these cases involved father-daughter or stepfather-stepdaughter incest. Brozan, Helping to Heal the Scars Left by Incest, NY Times, Jan. 9, 1984, at B2, col. 6. One expert's study estimates that over one-quarter of the population of female children have experienced sexual abuse before the age of 14, and well over one-third have had such an experience by the age of 18 years. D. Russell, Incidence and Prevalence of Sexual Abuse of Female Children, 7 Child Abuse & Neglect 133, 145 (1983). There is virtually unanimous agreement that sexual abuse is the fastest growing form of reported child abuse. K. MacFarlane & J. Waterman, Sexual Abuse of Young Children 5 (1986). The vast majority of investigated reports prove valid. R. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177, 178 (1983).

Experts estimate that the average age of a victim of childhood sexual abuse is age 8; victims' ages range from birth to age 16. M. Kirkpatrick, ed., Women's Sexual Experience 133 (1982). The duration of the abuse, however, may cause age estimations to be artificially high because the age listed as the age of abuse is almost always the victim's age at the time a report is made,

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[1]Childhood sexual abuse is defined for the purpose of this memorandum as any kind of exploitative sexual contact with persons related or unrelated by blood or marriage before the victim turned 16.

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EXHIBIT G47

and sexual abuse often begins long before it is reported. See K. MacFarlane & J. Waterman, supra at 7. Many experts believe that most child victims of sexual abuse were less than 8 years old at the time of initiation. See, e.g., R. Summit, supra at 178.

The abusers are usually family members, friends, and neighbors, and they are predominantly male. D. Finkelhor, Sexually Victimized Children 73-75 (1979). Traditionally, girls were believed to be sexually abused far more often than boys. S. Butler, Conspiracy of Silence: The Trauma of Incest 5 (1978) (citing V. DeFrancis, Protecting the Child Victim of Sex Crimes Committed by Adults 56, 66 (1969) (study concluding that 97% of offenders are adult males and 87% of child victims are females)). Recently, it has emerged that boys are abused much more frequently than previously believed. Surveys of child molesters (who are predominantly male) have demonstrated that as many as 85% of them were themselves abused as children. K. MacFarlane & J. Waterman, supra at 9-10.

It is estimated that anywhere from 50% to 90% of all sexual abuse of children goes unreported. S. Butler, supra at 12-13. A central element of childhood sexual abuse is secrecy: childhood sexual abuse happens when the child is alone with the abuser, and the secrecy makes it clear to the child that the activity is something bad and dangerous. R. Summit, supra at 181. Physical violence and/or the threat of physical violence, threats of harm to the victim's siblings or mother, the threat of abandonment or separation, and other psychologically coercive tactics used by the abuser result in the child becoming virtually incapable of disclosing the abuse. M. de Young, The Sexual Victimization of Children 41 (1982). Moreover, many of the victims are simply too young to be able to communicate effectively the abuse, or may be unaware that the behavior is anything unusual or inappropriate. K. MacFarlane & J. Waterman, supra at 5-7. In any event, children who do break this silence are rarely believed. M. Kirkpatrick, supra at 128-29.

The adult expectation that victims of abuse will exercise self-protection and immediately disclose the abuse ignores the inherent authority of the adult and the corresponding helplessness of the child. R. Summit, supra at 182-84. The fact that the abuser is often in a trusting and apparently loving position only increases the child's helplessness and powerlessness.[2]

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[2]The normal reaction of child victims is "to 'play possum,' that is to feign sleep, to shift position, and to pull up the covers. Small creatures simply do not call on force to deal with overwhelming threat. Where there is no place to run, they have no choice but to try to hide." R. Summit, supra at 183.

"Adults must be reminded that the wordless action or gesture of a parent is an absolutely compelling force for a dependent child and the threat of loss of love or loss of family security is more frightening to the child than any threat of violence." Id. at 183.

If the child does not seek or receive immediate intervention and protection, the child's only option becomes accommodating to the reality of continuing sexual abuse. The child faced with continuing abuse somehow must achieve a sense of control. He or she cannot safely conceptualize a parent as bad because to do so is tantamount to abandonment.[3] Thus, the only acceptable option for the child becomes assumption of responsibility for the abuse. R. Summit, supra at 184-86. This "accommodation syndrome" requires an internalization of the child's rage, fear, confusion, and sadness. This internalization of anger and anxiety is a survival mechanism that often leads to self-destructive and other destructive behaviors. Id. For example, a study of 195 female clients of a community mental health center found that 54.9% of the survivors of childhood sexual abuse reported previous suicide attempts, as opposed to 22.6% of nonvictims. The study further found that 92.9% of the women whose first suicide attempt occurred before age 13 were victims of childhood sexual abuse, and 87.2% of those whose first attempt was during adolescence were childhood sexual abuse victims. J. Briere & M. Runtz, Suicidal Thoughts and Behaviors in Former Sexual Abuse Victims, 18 Can. J. Behavioral Sci. 413 (1986).

In accommodating to an intolerable situation, a victim of childhood sexual abuse will often repress the abuse for many

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[3]This process is described as a "vertical split in reality testing:"

> If the very parent who abuses and is experienced as bad must be turned to for relief of the distress that the parent has caused, then the child must, out of desperate need, register the parent--delusionally--as good. Only the mental image of a good parent can help the child deal with the terrifying intensity of fear and rage which is the effect of the tormenting experiences. The alternative--the maintenance of the overwhelming stimulation and the bad parental image--means annihilation of identity, of the feeling of the self. So the bad has to be registered as the good. This is a mind-splitting or mind-fragmenting operation.

R. Summit, supra at 184 (quoting Shengold, Child Abuse and Deprivation: Soul Murder, 27 J. Am. Psychoanalytic Ass'n 539 (1979) (emphasis in original)).

years. E.S. Blume, The Walking Wounded: Post-Incest Syndrome, 15 SIECUS Report 5 (1986).

> Many, if not most, survivors of child sexual abuse develop amnesia so complete that they simply do not remember that they were abused at all; or, if they do remember, they minimize or deny the effects of the abuse so completely that that cannot associate it with any later consequences. They are the "walking wounded," functional adults who bear, often secretly, lifelong pain and impaired emotional functioning.

Id. (emphasis in original). One study of 53 female outpatients participating in therapy groups for incest survivors determined that 64% of the patients studied did not have full recall of the sexual abuse but reported some degree of amnesia, and 28% of the women reported severe repression. J. Herman & E. Schatzow, Recovery and Verification of Memories of Childhood Sexual Trauma, 4 Psychoanalytic Psychology 1, 4 (1987). A strong association was observed between the degree of reported amnesia and the age of onset and duration of the sexual abuse. Id. For most victims, it takes years to come to terms with the emotional injuries brought on by the sexual abuse. J. Herman, Father-Daughter Incest 177 (1981).

As a victim of childhood sexual abuse becomes an adult, he or she will often begin to exhibit signs of trauma. Adult survivors of childhood sexual abuse are more likely than their nonvictimized counterparts to manifest depression, self-destructive behavior, anxiety, feelings of isolation and stigma, poor self-esteem, a tendency toward revictimization, and substance abuse. A. Browne & D. Finkelhor, Initial and Long-Term Effects: A Review of the Research in D. Finkelhor, ed., Child Sexual Abuse: New Theory and Research, 143, 152-163 (1984). Difficulty in trusting others and sexual maladjustment are additional long-term effects reported by empirical researchers. Id. A childhood sexual abuse survivor might have partially or completely repressed the memory of the abuse, but the trauma might nevertheless be reenacted in nightmares, "flashbacks," and periods of disassociation. J. Herman, D. Russell, & K. Trocki, Long-Term Effects of Incestuous Abuse in Childhood, 143 Am. J. Psychiatry 1293 (1986).

A victim of childhood sexual abuse often denies injury as a coping response, and the shame, self-blame, and secrecy associated with childhood sexual abuse often inhibit a victim's understanding of its effects. See R. Summit, supra at 186-190. The accommodation process, in which the child has assumed responsibility for the abuse and internalized his or her feelings of rage and anxiety, often make victims incapable of discovering their

injuries for many years. A genuine understanding of the extent and cause of the injuries sustained by a survivor of childhood sexual abuse is unlikely to be developed until the survivor receives mental health treatment. J. Herman, Father-Daughter Incest, supra at 177-196.

III. Legal Remedies

The criminal justice system is largely inadequate to address the issue of childhood sexual abuse. The crime is seldom reported, and the possibility of conviction remote. See V. DeFrancis, supra at 187-191. One expert has estimated the conviction rate for childhood sexual abuse at 1% of all cases. D. Russell, The Secret Trauma 86 (1986). Consequently, for many survivors of childhood sexual abuse, civil redress becomes the only available legal remedy. The most formidable procedural bar to such suits is the application of statutes of limitation to traditional tort claims. M. Salten, Statutes of Limitation in Civil Incest Suits: Preserving the Victim's Remedy, 7 Harv. Women's L.J. 189, 190 (1984); see also Comment, Tort Remedies for Incestuous Abuse, 13 Golden Gate U. L. Rev. 609, 628-31 (1983).

The Washington Supreme Court, in a 5-4 decision, recently held that the discovery rule does not apply to civil suits brought by survivors of childhood sexual abuse. Tyson v. Tyson, 107 Wn.2d 72, 727 P.2d 226 (1986). A strong dissenting opinion by Justice Pearson discussed the necessity for application of the discovery rule in these cases. 107 Wn.2d at 80-94. The dissent pointed out that the purpose of the discovery rule is

> to provide an opportunity for an adult who claims to have been sexually abused as a child to prove not only that she was abused and that the defendant was her abuser, but that her suffering was such that she did not and could not reasonably have discovered all the elements of her cause of action at an earlier time. The policy behind providing this opportunity has been demonstrated: the nature of child sexual abuse . . . is often so secretive, so humiliating, and so devastating that a victim typically represses the events until the abuse is "discovered"--often through psychotherapy, and often well into adulthood.

107 Wn.2d at 93-94 (emphasis in original). The concurring opinion to the majority's decision noted the strength of the dissent's arguments, but stated that "[t]his is the exclusive province of the legislature, and the judiciary must not invade it." Id. at 80. Legislative intervention is therefore appropriate and, indeed, imperative.

IV. Application of the Discovery Rule

Traditionally, statutes of limitation begin to run as of the date of the wrongful act or omission which is the basis of the plaintiff's claim. Developments in the Law: Statutes of Limitations, 63 Harv. L. Rev. 1177, 1200-02 (1950). In instances in which injured plaintiffs may not know or be expected to know of their injuries until after the statute of limitations period has expired, courts have fashioned the "delayed discovery" exception. The discovery rule provides that the statute of limitations does not begin to run until the plaintiff discovers or through the use of reasonable diligence should have discovered the cause of action. See U.S. Oil v. Department of Ecology, 96 Wn.2d 85, 633 P.2d 1329 (1981). In determining whether to apply the discovery rule, courts traditionally have balanced the possibility of stale claims against the unfairness of precluding meritorious causes of action. 96 Wn.2d at 93. "That balancing test has dictated the application of the rule where the plaintiff lacks the means or ability to ascertain that a wrong has been committed." Id.

The discovery rule is particularly well-suited to cases involving childhood sexual abuse. Indeed, the Surgeon General's Northwest Conference on Interpersonal Violence specifically recommended application of the discovery rule to childhood sexual abuse cases. Conference Recommendations, dated September 23-26, 1987. The psychological trauma associated with childhood sexual abuse will often result in the victim lacking the means or ability to ascertain his or her injuries and their cause.

The public policy considerations underlying use of the discovery rule clearly support its application in cases involving childhood sexual abuse. The discovery rule, for example, is often applied in breach of trust cases. See, e.g., Peter v. Simmons, 87 Wn.2d 400, 552 P.2d 1053 (1976); Kittinger v. Boeing Co., 21 Wn. App. 484, 585 P.2d 812 (1978); Janisch v. Mullins, 1 Wn. App. 393, 461 P.2d 895 (1969). The same policies supporting application of the discovery rule in breach of trust cases support protection of plaintiffs' remedies in childhood sexual abuse cases: the victim of childhood sexual abuse is typically inexperienced in interpersonal relations and must rely on adults for that knowledge. Moreover, the legitimacy of a child's trust in and reliance on his or her family members historically has been recognized by the courts. See Salten, supra at 209.

Similarly, the discovery rule applies to fraud claims, see RCW 4.16.080(4), and failure by an adult to disclose to the child essential information regarding a child's rights and limitations on that adult's rights may be treated as fraud or constructive concealment. See Salten, supra at 210-11. A delayed discovery

rule is appropriate in cases involving fraudulent concealment. See, e.g., Kicklighter v. New York Life Ins. Co., 145 F.2d 548 (5th Cir. 1944). Moreover, the fact that only the defendant has had full knowledge of the wrongful acts is an important policy justification for application of the discovery rule. See U.S. Oil v. Department of Ecology, 96 Wn.2d at 93-94.

As stated more fully above, it is not unusual for a victim of childhood sexual abuse to repress all memory of the abuse. See E.S. Blume, supra at 5. In any case, most victims will be unable to connect their injuries with the abuse for many years. Id. Moreover, childhood sexual abuse related injuries often include problems in interpersonal relations, low self-esteem, feelings of isolation, and sexual dysfunction, all of which are unlikely to manifest themselves until adulthood. M. Tsai, S. Feldman-Summers & M. Edgar, Childhood Molestation: Variables Related to Differential Impacts on Psychosexual Functioning in Adult Women, 88 J. Abnormal Psych. 407, 414 (1979). Generally, it is only when an adult survivor of childhood sexual abuse enters therapy that any meaningful understanding of his or her injuries can be developed. M. Salten, supra at 202.

Discovery of the cause of a childhood sexual abuse survivor's injuries can also take years. Many victims are convinced that they are to blame for the abuse. See M. de Young, supra at 41. The concept of "blameless ignorance" historically has been a central justification for use of the discovery rule. See Urie v. Thompson, 337 U.S. 163, 170 (1949). That concept is clearly relevant in childhood sexual abuse cases. The trauma associated with sexual abuse causes a victim to be unable to connect his or her injury with the abuse. The victim thus is "blamelessly ignorant" of his or her abuse-related injuries. The abuser, on the other hand, is the direct cause of the victim's trauma, and should not be permitted to profit from the fact that discovery of the cause of a victim's injuries may occur long after the traditional statute of limitations period has elapsed.

No public benefit supports a rule that shields childhood sexual abusers from the consequences of their conduct. See Comment, Adult Incest Survivors and the Statute of Limitations: The Delayed Discovery Rule and Long-Term Damages, 25 Santa Clara L. Rev. 191, 217-18 (1985). Civil suits act as deterrents to unacceptable behavior. The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on potential abusers.

V. Conclusion

To apply the traditional statute of limitations "date of wrongful conduct" rule to civil suits brought by adult survivors of childhood sexual abuse is effectively to deny these plaintiffs a remedy. The discovery rule clearly is appropriate in these cases; application of the rule would mean that the statute of limitations for adult survivors of childhood sexual abuse would not begin to run until the plaintiff's injuries and the fact that they were caused by the abuse are discovered or should have been discovered by the plaintiff. The latent nature of many of the injuries and the time required to discover their cause, as well as the offender's role in coercing the child's silence, make application of the discovery rule essential in intentional tort suits alleging injuries resulting from childhood sexual abuse. Indeed, these cases are perhaps the most compelling examples of the need for the discovery rule. Legislative action is essential to provide survivors of childhood sexual abuse with a genuine and meaningful legal remedy.

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206-355-9710

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Urie v. Thompson, 337 U.S. 163 (1949)

Statutes and Miscellaneous

RCW 4.16.080(4)

Surgeon General's Northwest Conference on Interpersonal Violence, Recommendations dated September 23-26, 1987

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NATE
Carson City, March 11, 1991

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MARY JO MONGELLI
istant Secretary of the Senate

NOTICES

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Senate Bill No. 164.

Assemblyman Porter moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

Senate Bill No. 172.

Assemblyman Porter moved that the bill be referred to the Committee on Natural Resources, Agriculture and Mining.

Motion carried.

Senate Bill No. 190.

Assemblyman Porter moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 214.

Assemblyman Porter moved that the bill be referred to the Committee on Judiciary.

Motion carried.

REPORTS OF COMMITTEES

Mr. Speaker:

Your Committee on Judiciary, to which were referred Senate Bills Nos. 73, 102, 103, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

ROBERT M. SADER, *Chairman*

MOTIONS, RESOLUTIONS AND NOTICES

Mr. Speaker appointed a committee of three members consisting of Assemblymen Spitler, Callister and Humke as a Review Committee of the Pioche-Indian Springs Women's Prison Sites with Assmblyman Spitler to serve as Chairman.

SECOND READING AND AMENDMENT

Assembly Bill No. 219.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 166.

Amend section 1, page 1, line 5, by deleting "2" and inserting "3".

Assemblyman Sader moved the adoption of the amendment.

Remarks by Assemblyman Sader.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 269.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 168.

Amend the bill as a whole by adding thereto a new section, designated sec. 2, following section 1, to read as follows:

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT A.B. 219

ASSEMBLY BILL NO. 219—COMMITTEE ON JUDICIARY

JANUARY 24, 1991

Referred to Committee on Judiciary

SUMMARY—Expands period of limitation for cause of action for damages for injury caused by sexual abuse which occurred when plaintiff was minor. (BDR 2-32)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to limitation of actions; expanding the period of limitation for a cause of action for damages for injuries caused by sexual abuse which occurred when the plaintiff was a minor; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 11 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 3 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse,

whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 2. NRS 11.190 is hereby amended to read as follows:

11.190 Actions other than those for the recovery of real property, unless further limited by specific statute, can only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

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(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without his fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.545 for damages sustained by a financial institution because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the state, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) [An] *Except as otherwise provided in section 1 of this act, an* action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the

seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 3. The provisions of this act apply to a cause of action filed:

1. On or after October 1, 1991, including any cause of action which would be barred by the application of the period of limitation applicable before October 1, 1991; and

2. Before October 1, 1991, and pending on October 1, 1991.

GENERAL FILE AND THIRD READING

Assembly Bill No. 219.
Bill read third time.
Remarks by Assemblyman Bayley.
Roll call on Assembly Bill No. 219:
YEAS—40.
NAYS—None.
Absent—Garner, Mr. Speaker.

Assembly Bill No. 219 having received a constitutional majority, Madam Speaker pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 269.
Bill read third time.
Remarks by Assemblymen Evans and Gibbons.
Conflict of Interest declared by Assemblyman Gibbons.
Roll call on Assembly Bill No. 269:
YEAS—39.
NAYS—None.
Absent—Garner, Mr. Speaker.
Not voting—Gibbons.

Assembly Bill No. 269 having received a constitutional majority, Madam Speaker pro Tempore declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assemblyman Porter moved that the Assembly recess subject to the call of the Chair.
Motion carried.

Assembly in recess at 11:12 a.m.

ASSEMBLY IN SESSION

At 11:15 a.m. Mr. Speaker presiding.
Quorum present.

GENERAL FILE AND THIRD READING

Assembly Bill No. 323.
Bill read third time.
Remarks by Assemblyman Wendell Williams.
Roll call on Assembly Bill No. 323:
YEAS—41.
NAYS—None.
Absent—Garner.

Assembly Bill No. 323 having received a constitutional majority, Mr. Speaker declared it passed.
Bill ordered transmitted to the Senate.

Assembly Bill No. 332.
Bill read third time.
Remarks by Assemblyman Humke.

Chairman Titus closed the hearing on A.B. 93 and opened the hearing on Assembly Bill (A.B.) 219.

A.B. 219: Expands period of limitation for cause of action for damages for injury caused by sexual abuse which occurred when plaintiff was minor.

Mr. Tom Perkins, Nevada Trial Lawyers Association, spoke in support of A.B. 219. Mr. Perkins explained this bill will codify a Nevada Supreme Court decision which allows the victims of sexual abuse or battery to bring suit years after the offense. He added this bill allows for a 3-year statute of limitations after the victim reaches the age of 18 or after the victim discovers or "reasonably should have" discovered the injury was caused by this abuse.

Mr. Perkins stated many victims will block out sexual abuse for many years and will suffer emotionally and not even realize they have been the victim of sexual abuse or battery as a child.

Chairman Titus asked Mr. Perkins what "reasonably should have" means. Mr. Perkins explained this was "a term of art used in other statutes of limitations". It is reasonable to assume that this type of abuse can be blocked out for many years and then, through some event in the person's life, he suddenly remembers, his right to bring suit should not be denied even if this happened 10 years prior.

Senator O'Donnell asked Mr. Perkins what would happen if a juvenile goes to the police and files a complaint and the police do not believe this person and exonerate the perpetrator. Senator O'Donnell went on by adding that after many years, the victim obtains a written confession from the perpetrator. He then asked if this victim would have any redress. Mr. Perkins said this bill might cut off a cause of action for someone in these circumstances, because if the person were aware of the battery and had not blocked it out, and then tried to file suit more than 3 years after his eighteenth birthday, he would not be able to do so.

Mr. Perkins went on to explain this bill would apply to a victim who made a report, of which nothing ever came, and then blocked it out, but later on, as an adult, remembered it. He could bring suit within 3 years of remembering the abuse.

Senator Tyler asked Mr. Perkins to cite other places where the "reasonably should have" appears in Nevada Revised Statutes (NRS). Mr. Perkins replied this could be found in Chapter 11 and Chapter 41 of the NRS.

Mr. Neilander added he knew of four other statutes of limitations that use this language. Mr. Neilander explained this is most easily applied to medical malpractice, where there is a latency period, such as in asbestos disease, which has a latency period of about 15 years before any of the symptoms begin to appear.

Mr. Perkins said, by the same token, if someone struggles with this for 20 years and does not say anything about it, he should be barred from bringing suit because if he knows this has happened, he must come forward right away.

Mr. Thom Reilly, Chief of Social Services, Nevada State Welfare Division, testified in favor of A.B. 219. See Exhibit D.

Senator O'Donnell asked Mr. Reilly if he would have a problem with amending the bill to add that if a complaint had been filed and found unsubstantiated by a government agency, that could also be condition for discovery. Mr. Reilly said he would not have a problem with that amendment. Mr. Reilly added people who cannot resolve these issues become victims all their lives.

Senator Neal arrived at the hearing.

Chairman Titus closed the hearing on A.B. 219 and opened the hearing on Assembly Bill (A.B.) 287.

A.B. 287: Allows arrest of person during night for misdemeanor under certain circumstances.

Mr. Wayne Lucia, Reno Police Department, testified in favor of A.B. 287. Mr. Lucia said A.B. 287 would expand the authority to arrest, on warrants of arrest, at night, under certain circumstances. Mr. Lucia said currently felony and gross misdemeanor warrants can be served 24-hours a day, but misdemeanor warrants must be served between 7 a.m. and 7 p.m. unless the judge authorizes 24-hour service of the warrant.

Mr. Lucia explained these restrictions are in place so people are not dragged out of their homes at 3 a.m. on a misdemeanor warrant. He went on to explain this bill still protects individuals' rights in their home, but would allow police to

Chairman Titus closed the hearing on A.B. 323.

SENATOR TYLER MOVED TO PASS A.B. 51.

SENATOR ADLER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR NEAL WAS ABSENT FOR THE VOTE.)

* * * * *

A.B. 93 will be held for 1 day pending an investigation into how this will affect the retirement.

SENATOR ADLER MOVED TO PASS A.B. 219.

SENATOR COOK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

A.B. 287 will be held to be heard by a subcommittee comprised of Senator Neal and Senator O'Donnell.

SENATOR ADLER MOVED TO PASS A.B. 323.

SENATOR TYLER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

NEVADA STATE WELFARE DIVISION
SUMMARY OF TESTIMONY

TO: Linda A. Ryan, Administrator

FROM: Thom Reilly (Name) _____ (Title)

Bill No.: AB 219 Senate Judiciary Committee Meeting

Scheduled Date: 03-26-91

Time: 8:30 a.m.

Place: Rm. 231

Position on Bill:
- ☒ Support
- ☐ Oppose
- ☐ Neutral

Reasons for Position/Planned Testimony: *(Please state advantages, disadvantages, impact on Division/Program(s), key points and prominent issues involved.)* Attach continuation sheet.

SEE ATTACHED

If the committee has any questions, I am in room 316 at my Budget Subcommittee hearing.

cc: Jerry Griepentrog, Director, Department of Human Resources
Governor's Office
Patty Williams, Staff Specialist

EXHIBIT D

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TESTIMONY ON ASSEMBLY BILL 219

FOR THE RECORD I AM THOM REILLY, CHIEF OF SOCIAL SERVICES FOR NEVADA STATE WELFARE DIVISION.

THE WELFARE DIVISION SUPPORTS ASSEMBLY BILL 219 AS AMENDED.

THE BILL WILL ALLOW FOR VICTIMS OF SEXUAL ABUSE WHICH OCCURRED WHEN THE PERSON WAS A MINOR TO RECOVER DAMAGES FROM THE PERPETRATOR. MANY OF THE YOUTH SERVED THROUGH THE WELFARE DIVISION'S CHILD WELFARE PROGRAM ARE VICTIMS OF CHILDHOOD SEXUAL ABUSE, WHICH IS PERHAPS THE MOST DEVASTATING FORM OF CHILD ABUSE. FREQUENTLY THESE YOUNG PEOPLE ARE NOT FULLY AWARE OF THE IMPACT OF SEXUAL VICTIMIZATION UNTIL LATER IN LIFE WHEN THEY ARE FACED WITH THE DEMANDS OF ADULTHOOD. THE DIVISION HAS ENCOUNTERED MANY YOUTH WHO LATER RETURN HAVING REALIZED THE PERSONAL DAMAGE THEY HAVE ENDURED AS VICTIMS OF SEXUAL ABUSE. THESE INDIVIDUALS OFTEN LACK THE BASIC RESOURCES TO SUBSIST LET ALONE TO OBTAIN MUCH NEEDED COUNSELING. ASSEMBLY BILL 219 WILL OPEN THE DOOR FOR ALL VICTIMS OF CHILDHOOD SEXUAL ABUSE TO RECOVER DAMAGES FROM THOSE WHO ABUSED THEM AND MAY PROVIDE AN IMPORTANT SOURCE OF FUNDING TO PAY FOR COUNSELING AND OTHER SERVICES NECESSARY TO ASSIST THESE YOUNG PEOPLE IN THEIR RECOVERY.

Roll call on Assembly Bill No. 217:

YEAS—21.

NAYS—None.

Assembly Bill No. 217 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 219.

Bill read third time.

Roll call on Assembly Bill No. 219:

YEAS—21.

NAYS—None.

Assembly Bill No. 219 having received a constitutional majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Vergiels moved that Assembly Bills Nos. 323, 353; Assembly Joint Resolution No. 3 be taken from the General File and placed on the General File for the next legislative day.

Remarks by Senator Vergiels.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

By the Committee on Government Affairs:

Senate Bill No. 369—An Act relating to financial administration; authorizing a temporary advance from the state general fund to certain budget accounts of the health division of the department of human resources; and providing other matters properly relating thereto.

Senator Horn moved that the bill be referred to the Committee on Finance.

Motion carried.

By the Committee on Government Affairs:

Senate Bill No. 370—An Act relating to collective bargaining by local governments; establishing the criteria to be used by a factfinder in making recommendations and awards in disputes between local governments and certain employees; and providing other matters properly relating thereto.

Senator Horn moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

By the Committee on Natural Resources:

Senate Bill No. 371—An Act relating to the state executive department; requiring the departments of the executive branch of state government to prepare an assessment of the takings implications on private property for certain governmental actions; and providing other matters properly relating thereto.

Senator Adler moved that the bill be referred to the Committee on Government Affairs.

Motion carried.

that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

Sec. 2. This act becomes effective upon passage and approval.

Assembly Bill No. 219—Committee on Judiciary

CHAPTER 58

AN ACT relating to limitation of actions; expanding the period of limitation for a cause of action for damages for injuries caused by sexual abuse which occurred when the plaintiff was a minor; and providing other matters properly relating thereto.

[Approved April 8, 1991]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 11 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An action to recover damages for an injury to a person arising from the sexual abuse of the plaintiff which occurred when the plaintiff was less than 18 years of age must be commenced within 3 years after the plaintiff:

(a) Reaches 18 years of age; or

(b) Discovers or reasonably should have discovered that his injury was caused by the sexual abuse,

whichever occurs later.

2. As used in this section, "sexual abuse" has the meaning ascribed to it in NRS 432B.100.

Sec. 2. NRS 11.190 is hereby amended to read as follows:

11.190 Actions other than those for the recovery of real property, unless further limited by specific statute, can only be commenced as follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged on an account in a store.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property, but when the waste or trespass is committed by means of underground works upon any mining

claim, the cause of action shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof, but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," which has a recorded mark or brand upon it at the time of its loss, and which strays or is stolen from the true owner without his fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant.

(d) Except as otherwise provided in NRS 112.230, an action for relief on the ground of fraud or mistake, but the cause of action in such a case shall be deemed to accrue upon the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(e) An action pursuant to NRS 40.545 for damages sustained by a financial institution because of its reliance on certain fraudulent conduct of a borrower, but the cause of action in such a case shall be deemed to accrue upon the discovery by the financial institution of the facts constituting the concealment or false statement.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon liability incurred by acting in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to a person or the state, or both, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) [An] *Except as otherwise provided in section 1 of this act, an* action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person apply only to causes of action which accrue after March 20, 1951.

5. Within 1 year:

(a) An action against an officer, or officer de facto to recover goods, wares, merchandise or other property seized by the officer in his official capacity, as tax collector, or to recover the price or value of goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention or sale of, or injury to, goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) An action against an officer, or officer de facto for money paid to the officer under protest, or seized by the officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

Sec. 3. The provisions of this act apply to a cause of action filed:

1. On or after October 1, 1991, including any cause of action which would be barred by the application of the period of limitation applicable before October 1, 1991; and

2. Before October 1, 1991, and pending on October 1, 1991.

Assembly Bill No. 285—Assemblymen Norton, Bennett, Petrak, Wendell Williams, Bache, Gibbons, Anderson, Freeman, Garner, Haller, Giunchigliani, Arberry, Johnson, Sader, Spitler and Myrna Williams

CHAPTER 59

AN ACT relating to state finances; removing the limitation on the amount of money available for a certain program of the welfare division of the department of human resources; making a supplemental appropriation to the welfare division for these programs; and providing other matters properly relating thereto.

[Approved April 8, 1991]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 55 of chapter 611, Statutes of Nevada 1989, at page 1357, is hereby amended to read as follows:

Sec. 55. The total amounts appropriated in section 30 of this act to each of the accounts of the welfare division enumerated in section 52 of this act, except for the amounts appropriated for the *state aid to the medically indigent program and the* assistance to the aged and blind programs, are limits, and the division shall not request additional money for these programs.

Sec. 2. There is hereby appropriated from the state general fund to the welfare division of the department of human resources the sum of $2,442,000 for the program of state aid to the medically indigent. This appropriation is supplemental to that made by section 30 of chapter 611, Statutes of Nevada 1989, at page 1350.

Sec. 3. This act becomes effective upon passage and approval.

MTS 0152

Electronically Filed
6/28/2022 2:15 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
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B. D., Plaintiff(s) vs. Clark County School District, Defendant(s)	Case No.: A-22-853154-C Department 13

NOTICE OF HEARING

Please be advised that the Defendants' Motion to Dismiss Plaintiffs' Complaint as to Plaintiff J.D. and Plaintiffs' Constitutional Claims, Pursuant to NRCP 12(b)(5) in the above-entitled matter is set for hearing as follows:

Date: August 04, 2022

Time: 9:00 AM

Location: RJC Courtroom 03D
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Marie Kramer
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Marie Kramer
Deputy Clerk of the Court

Electronically Filed
8/16/2022 10:13 AM
Steven D. Grierson
CLERK OF THE COURT

JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
WALTER R. CANNON, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

NOTICE OF ENTRY OF ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D., AND AS TO PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5)

///

Case Number: A-22-853154-C

TO: ALL PARTIES OF INTEREST AND THEIR COUNSEL OF RECORD;

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Court entered an Order Denying in Part and Granting in Part Defendants' Motion to Dismiss Plaintiffs' Complaint as to Plaintiff J.D., and as to Plaintiffs' Constitutional Claims, Pursuant to NRCP 12(b)(5), a copy of which is attached hereto, filed on the 15th day of August, 2022.

DATED this 16th day of August, 2022.

OLSON CANNON GORMLEY & STOBERSKI

By: _____

JAMES R. OLSON, ESQ.
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CERTIFICATE OF SERVICE

On the 16 day of August, 2022, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **NOTICE OF ENTRY OF ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D., AND AS TO PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5)** on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following

CHRISTIAN M. MORRIS, ESQ.
ALEXANDRA B. McLEOD, ESQ.
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An Employee of Olson Cannon Gormley & Stoberski

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

Date of Hearing: 8/4/2022
Time of Hearing: 9:00 a.m.

ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D., AND AS TO PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5)

THIS MATTER having come on for hearing before the above-entitled Court on the 4th day of August, 2022, at 9:00 a.m., Plaintiffs not having been present but having been represented by ALEXANDRA B. McLEOD, ESQ., of the law firm NETTLES | MORRIS, and Defendants not having been present but having been represented by STEPHANIE A. BARKER, ESQ., of the law firm OLSON CANNON GORMLEY & STOBERSKI; and

THE COURT HAVING read and considered Defendants' Motion to Dismiss, Plaintiffs' Opposition, Defendants' Reply, the exhibits attached thereto, and having entertained the arguments of counsel at the time of hearing, the Court hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW granting in part and denying in part Defendants' Motion to Dismiss as stated hereinbelow:

FINDINGS OF FACT

1. Plaintiffs' Complaint arises out of the alleged sexual assault of the minor Plaintiff B.D. in or about November 2016, when B.D. was a Kindergartener at a Clark County School District school – Plaintiffs allege B.D. was assaulted by other Kindergarten students while in the bathroom at his elementary school. Complaint paras. 14-31.
2. Plaintiffs' Complaint alleges that at all relevant times, Plaintiff J.D. was the mother of minor Plaintiff B.D. Complaint para. 13.
3. The alleged sexual assault(s) of the minor Plaintiff B.D. occurred on or about and between August 29, 2016 and November 10, 2016. Complaint paras. 25-28.
4. The alleged sexual assault(s) was made known to Plaintiff J.D. on or about November 10, 2016. Complaint para. 29.
5. Plaintiffs' Complaint was first filed on May 25, 2022.
6. Plaintiffs' Complaint asserts six negligence based claims in the First, Second, Third, Fourth, Fifth, and Seventh Causes of Action.
7. Plaintiffs' Sixth Cause of Action asserts violations of the Nevada Constitution and seeks monetary damages related thereto. Complaint paras. 107-121.

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CONCLUSIONS OF LAW

A. NRCP 12(b)(5) Motion to Dismiss

1. Defendants' Motion to Dismiss is made pursuant to NRCP 12(b)(5).

2. A Motion to Dismiss under NRCP 12(b)(5), may be granted where it "appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (quoting *Simpson v. Mars Inc*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997)). Every fair inference must be drawn in favor of the plaintiff. *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839 (2000).

3. When considering a Rule 12(b)(5) Motion to Dismiss, the allegations of the Complaint must be accepted as true. *Hynds Plumbing & Heating Co. v. Clark County School District,* 94 Nev. 776, 587 P.2d 1331 (1979).

B. Statute of Limitations

4. NRS 11.190(4) provides a two-year statute of limitations for personal injury claims.

5. NRS 11.215 as amended in 2021, contains an exception to NRS 11.190(4), eliminating any limitations period for a child victim of sexual abuse or sexual exploitation to commence an action to recover damages against the perpetrator or person convicted of sexual abuse or exploitation as follows:

> **NRS 11.215 Actions for damages for injury arising from sexual abuse or sexual exploitation of minor; actions involving injury arising from appearance of minor in pornography.**
>
> 1. An action to recover damages for an injury to a person arising from the sexual abuse or sexual exploitation of the plaintiff which occurred when the plaintiff was less than 18 years of age may be commenced against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff at any time after the sexual abuse or sexual exploitation occurred.
>
> . . .

6. The phrase "damages for an injury to a person" in the opening sentence of NRS 11.215 creates ambiguity as to whether the statute applies to eliminate any limitations period for an action to recover damages by the parent of a child victim of sexual abuse or sexual exploitation.

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C. Nevada Constitutional Claims

7. When "... a cause of action does not exist, [ ] courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Alexander v. Sandoval*, 532 U.S. 275, 286-87, 121 S. Ct. 1511 (2001).

8. The Nevada Supreme Court has cautioned the judiciary against permitting a private cause of action without a specific legislative directive. *See Baldonado v. Wynn*, 124 Nev. 951, 959, 194 P.3d 96, 101 (2008) (stating "the absence of an express provision providing for a private cause of action to enforce a statutory right strongly suggests that the legislature did not intend to create a privately enforceable judicial remedy"); *Collins v. Palczewski*, 841 F. Supp. 333, 340 (D. Nev. 1993) (stating "§197.200 is strictly criminal in nature and possess no civil implications").

9. There is no express Nevada statutory or Nevada constitutional provision providing a private right of action for damages related to violation of the Nevada Constitutional Articles cited by Plaintiffs, in circumstances as alleged in Plaintiffs' Complaint, e.g. absence of school staff supervision allowing for Kindergartener on Kindergartener assault.

10. Plaintiffs have adequate remedies at law through tort claims authorized by NRS Chapter 14 (*see* 41.0305 et seq.) as asserted in Plaintiffs' Complaint.

ACCORDINGLY;

IT IS HEREBY ORDERED THAT Defendants' Motion to Dismiss all claims by Plaintiff J.D., the mother of the minor Plaintiff B.D., as beyond the NRS 11.190(4) statute of limitations, is denied without prejudice to renew as a motion for summary judgment following discovery.

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IT IS FURTHER ORDERED THAT Defendants' Motion to Dismiss Plaintiffs' Sixth Cause of Action for violation of the Nevada Constitution, is granted.

IT IS SO ORDERED.

~~DATED:~~

Dated this 15th day of August, 2022

DISTRICT COURT JUDGE

TMB
999 A9C D352 1B29
Mark R. Denton
District Court Judge

Submitted by:

OLSON CANNON GORMLEY & STOBERSKI

By:
STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 003176
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendants
Clark County School District, Maribel McAdory, Jeffrey Granger, and Pamela Norton-Lindemuth

Approved as to Form and Content by:

NETTLES | MORRIS

By: /s/ Alexandra B. McLeod
ALEXANDRA B. McLEOD, ESQ.
Nevada Bar No. 8185
2250 Corporate Circle, Suite 390
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Nan Langenderfer

From: Alexandra McLeod <Alexandra@nettlesmorris.com>
Sent: Monday, August 8, 2022 5:05 PM
To: Stephanie Barker
Cc: Nan Langenderfer; Linda Roth; Sofia Reyes; Thalia Gomez; Norma Chavarria; Jasmine Salado; Kimberly Nelson
Subject: RE: BD v. CCSD - Order re CCSD MTD

The only changes I have are to the spelling of my last name – it is incorrect on page 2 (2 C's instead of one) but it is correct on the signature block at the end of the document. With that correction, you may affix my e-signature.

*Please note our new address as of 8/1.

Kind regards,
Alex



ALEXANDRA B. MCLEOD, ESQ.
Trial Attorney

NETTLES MORRIS
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From: Stephanie Barker <sbarker@ocgas.com>
Sent: Friday, August 5, 2022 11:29 AM
To: Alexandra McLeod <Alexandra@nettlesmorris.com>
Cc: Nan Langenderfer <nlangenderfer@ocgas.com>; Linda Roth <lroth@ocgas.com>
Subject: BD v. CCSD - Order re CCSD MTD

Good morning Alexandra:

It was good to virtually put your face with your name yesterday.

Attached is a draft Order re: Judge Denton's ruling on CCSD's Motion to Dismiss, in Word format.

Please let me know if you would like changes, and if not, if we have your permission to submit with your electronic signature.

Please be advised that I will be out of the office from August 8 through the 23rd. I will have very limited email access and will be at a 9 hr. time difference, but I will attempt to monitor for your response, proposed changes and ultimate authorization to submit the order.

Thank you.

Stephanie A. Barker, Esq.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

B. D., Plaintiff(s) vs. Clark County School District, Defendant(s)	CASE NO: A-22-853154-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 8/15/2022

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Steven D. Grierson
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

B.D., Plaintiff(s), vs. CLARK COUNTY SCHOOL DISTRICT, Defendant(s).	Case No. A-22-853154-C DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON,
DISTRICT COURT JUDGE

THURSDAY, AUGUST 4, 2022

TRANSCRIPT OF PROCEEDINGS RE:
DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT AS TO PLAINTIFF J.D. AND PLAINTIFFS' CONSTITUTIONAL CLAIMS, PURSUANT TO NRCP 12(b)(5)

APPEARANCES:

For the Plaintiff(s): ALEXANDRA B. McLEOD, ESQ.

For the Defendant(s): STEPHANIE A. BARKER, ESQ.

RECORDED BY: JENNIFER GEROLD, COURT RECORDER

LAS VEGAS, NEVADA, THURSDAY, AUGUST 4, 2022

[Proceeding commenced at 9:34 a.m.]

THE COURT: Page 8, B.D., Plaintiff, versus Clark County School District. Sorry, B.D. versus Clark County School District.

MS. McLEOD: Good morning, Your Honor. Alexandra McLeod, 8185, from Nettles Morris on behalf of the plaintiffs.

THE COURT: Good morning.

MS. BARKER: Good morning, Your Honor. Stephanie Barker, Number 3176, on behalf of the Clark County School District.

THE COURT: Good morning.

It's Defendant's Motion to Dismiss Plaintiff's Complaint as to Plaintiff JD and Plaintiff's Constitutional Claims. It's a 12(b)(5) motion. Go ahead.

MS. BARKER: Correct, Your Honor.

The motion's pretty straightforward. The lawsuit arises out of an alleged sexual assault between kindergartners that occurred at an elementary school in 2016. The plaintiffs are the minor plaintiff victim's mother and the alleged minor plaintiff victim.

We have filed a Motion to Dismiss the claims of the mother as beyond the two-year statute of limitation. As pled in the complaint, she had notice of the event in 2016, as of the time it was allegedly reported to her. And her two-year statute of limitations is expired.

Plaintiff's opposition to that cites to NRS -- I'm going to get the statute number wrong -- 11.215, which extends the statute of limitation for a child victim of sexual assault to file suit on their own behalf, based on, A, their age, or B, their discovery of the injury.

We've done the legislative history with regard to that statute and it was intended to extend statutes for victims who may have suppressed memories of sexual assault, might not remember that they were assaulted until after they're an adult or after they're in therapy. And we've run through that legislative history, Your Honor, in the briefing, and I won't reiterate it now, unless Your Honor wants to do that.

But in sum, that history indicates that the extension of that statute was to allow child victims who've repressed memories to have a right of action once the memory resurfaces and they are in a position to sue on their own behalf.

There is nothing in the legislative history that indicates there was an intent to extend statutes of limitations to adult parents of alleged victims.

THE COURT: What really stands out to me in that statute, and we're talking about NRS 11.215, right?

MS. BARKER: Correct, Your Honor.

THE COURT: Is -- in the first portion, subsection 1, says: An action to recover damages for an injury to a person. Okay. Uses the term person.

Arising from the sexual abuse or sexual exploitation of the plaintiff.

So there's person and then there's plaintiff.

MS. BARKER: Correct.

THE COURT: Why does it say plaintiff instead of person in that first portion?

MS. BARKER: Your Honor, I think that's where Plaintiffs are arguing it creates an ambiguity in the statute.

THE COURT: It sure does.

MS. BARKER: And that's --

THE COURT: Seems to me.

MS. BARKER: And that's why I went to the legislative history.

THE COURT: Uh-huh.

MS. BARKER: The law says that where there's an ambiguity and a statute, the Court's entitled to and should look at the legislative history to resolve that ambiguity. And that's where we get the explanation of the purpose of the extension of that statute. Wasn't to extend statutes of limitations to adults.

And by way of example, Your Honor, had the victim themselves been beyond the age of 18, the victim had, at the time the statute was enacted, the victim had a two-year time in which to bring that. And then they extend the time for the victim, not for the adult who had notice. And the issue is when does the victim, A, have notice, and B, have statutory capacity to sue?

And this mother knew of the alleged injury in November of 2016. And no complaint was filed until 2022. She's beyond the statute of limitations as to her claims. Not as to the claims with the child, but as to her claims.

THE COURT: All right.

MS. BARKER: And that's why I went to the legislative history, Your Honor.

THE COURT: All right.

MS. BARKER: Because this plaintiff points out, that language arguably creates an ambiguity.

THE COURT: All right.

MS. BARKER: Okay. The next request for relief is on Plaintiff's sixth cause of action, which is a Nevada Constitutional cause of action, where they are alleging a violation of Nevada constitutional rights.

What they are seeking in that allegation is personal damages in the nature of a constitutional injury damage. The cases cited by Plaintiffs all talk about declaratory or injunctive relief in a Constitutional claim. A plaintiff looking for a court interpretation of a Constitutional application to facts and circumstances or the application of a statute. The exception is eminent domain. The Constitution provides that eminent -- taking an eminent domain must have just compensation. That's in the Constitution.

There is no Constitutional or statutory provision that creates a private right of action for damages in the circumstances

presented in this case.

And so on that basis, we've moved to dismiss the Constitutional claim.

THE COURT: But there is a statutory basis, right?

MS. BARKER: Question --

THE COURT: Not Constitutional, right?

MS. BARKER: No. There is no -- there's a statutory basis to claim tort damages.

THE COURT: That's what I'm --

MS. BARKER: And we're not challenging those tort claims.

THE COURT: Uh-huh.

MS. BARKER: And there is a statutory basis to bring those. What we're challenging is the absence of a statutory basis to bring the Constitutional claims.

THE COURT: Okay.

MS. BARKER: There's no right to damages under the Constitution for the allegations.

THE COURT: All right. Thank you.

Response?

MS. McLEOD: Thank you, Your Honor.

And as far as our perspective on the mother's claims, the first issue of the Motion to Dismiss, we believe that the Court rightly hit the issue -- hit the nail right on the head with the language from the statute itself, and specifically those words specifically chosen by

the legislature, person versus plaintiff. Obviously, they had plaintiffs in mind when they were writing that statute and could have put plaintiff in both of those parts -- both of those spaces in the statute. And they did not. And it must, you know, that decision must be re-looking at the statute now must interpret those decisions to have been intentional by the legislature.

The defendant's proposition insults the very idea of judicial economy and would require two suits for the same actions, the same facts, and the same harms. They would require parents to bring claims and then allow an indefinite period of time for the minor to bring the same claims before the Court again, which, again, is against all judicial economy.

But also, here, everyone recognizes that, certainly, the mom's claims are secondary and entirely derivative of the claims of the minor. And so it makes sense that those would be brought hand-in-hand. You don't bring a loss of consortium claim separately and years before you bring the claim for the underlying injury. It just doesn't make sense. And we don't believe that the legislature in this case would intend to double the case load on the courts when the claims that are included, again, are derivative of the claims protected by NRS 11.215.

In addition to that language, person versus plaintiff, there's also the clear language in the statute that an action may be commenced against the alleged perpetrator or person convicted of sexual abuse or sexual exploitation of the plaintiff at any time.

In 2017 -- and defense counsel, you know, did provide the legislative history here, but 2017, the legislator -- legislature, excuse me, manifested their intent to encourage civil claims for sexual abuse of a minor when they increased the time limitation from 10 years to 20 years.

And then given the opportunity to review those claims again two sessions later, the legislature doubled down on the intention to encourage those civil claims by changing it from not -- it was 10, then 20 years, and then they changed the language to at any time.

It's obviously the intent of the legislature to have these claims prosecuted so that the people, particularly what we have in this case, which are state actors charged with the trust of, you know, parents to watch their children during the day, to be -- to allow those claims to go forward. And public policy supports that same idea.

We believe that the amendments and the history of the legislative amendments for NRS 11.25 manifest a clear intention for claims for sexual abuse to be brought regardless of the time. And it only makes sense that the derivative claims of the parent be brought, part and parcel, together in the same suit, both for reasons of logic, but also reasons of judicial economy.

Particularly in the context of NRCP 12(b)(5), and that motion -- all things must be taken in the light most favorable to the nonmoving party, and if there's any ambiguity about whether

NRS 11.215 tolls the statute of limitations for the mother, that must be -- the benefit of the doubt must be given to the plaintiff and these claims allowed to proceed. Particularly because the defendant's motion would not actually be dispositive of the case in total, there's no reason why those -- these claims cannot continue together. And if the development of the case is such that Defendant finds it necessary, I can take that up on appeal once the claims have been resolved at the district court level, because, again, these claims would still be prosecuted on behalf of the minor.

With regard to the second part of the motion, about the Constitutional claims here and whether there is, in fact, a private right of action. Is there -- the Courts must have the power to adjudicate disputes regarding individual Constitutional rights and in order to guarantee the rights for Nevadans.

And we believe that the question of whether or not the private right exists, again, must be resolved at this stage of the pleadings in a light most favorable to the plaintiffs. But we believe that the courts have recognized the so-called private right of action for state due-process claims, and we give an example of that in the Dickerson case cited at page 12 of our brief in Footnote 34.

But, again, the idea that the Constitution could not enforced by the courts simply guts the idea of our citizens being able to enforce their state Constitutional rights and we believe that that is nonsensical to leave individuals Nevadan without a remedy before the courts.

And for all of those reasons and the reasons set forth in our briefing, we believe the Court should deny the Motion to Dismiss and allow these claims to continue.

THE COURT: All right. Thank you.

Ms. Barker?

MS. BARKER: Your Honor, just briefly in response, as you look at the legislative history for this statute, the purpose of enacting extended statutes of limitations was to address difficulties created, one, by having a minor victim with a right of action, and two, a minor victim who might not know they'd been victimized or have the capacity to come forward.

This circumstance is different. This circumstance is one where you've got a minor victim and a parent who has notice of the alleged abuse. The parent has a right to pursue her own cause of action as of the date of her own notice. There's no suppressed --

THE COURT: But are there considerations that apply as to not wanting, maybe, to come out to do that as --

MS. BARKER: Not within the discussion, in the creation of this statute, Your Honor. You've got to look at what the legislature intended to cure. In this circumstance, Mom could have filed within two years under her own statute and brought the claim on behalf of her child within two years. There's no question of whether or not there was notice to the parent and the facts show discussion with the child about the alleged assault at the time it occurred. You don't have a repressed memory in this circumstance.

Two, you have someone in a protective legal capacity to file action on behalf of that child. If she elected not to file action on behalf of the child within the two years, the child's right of action continues. And we are not contesting whether or not this child has a right of action under that statute. The child does. The parent does not. She had no suppressed memory, and she had legal capacity as of the date of her notice.

And there is nothing in the legislative history that indicates this statue was intended to extend, ad infinitum, a cause of action for an adult parent's own claimed personal injury beyond two years from the date they had notice of the issue.

THE COURT: Is there a rule of construction? Refresh my recollection, going to -- if there's an ambiguity here, okay.

MS. BARKER: If there's an ambiguity.

THE COURT: And I want to make -- be clear, I'm not making a determination at this point.

MS. BARKER: No, I understand.

THE COURT: Okay. If there is an ambiguity, is there a rule of construction that applies as would applicable, say, in contract interpretation and that kind of thing?

MS. BARKER: The rule of construction, we've cited the law to that regarding our brief. The rule of construction is the Court looks to the legislative --

THE COURT: Legislative history.

MS. BARKER: -- history to establish legislative intent and

the Court's obligation is to interpret the statute --

THE COURT: Right.

MS. BARKER: -- as intended by the legislature. That's complicated if you don't have record of intent. In this case, there's record of intent. And the intent was to extend for the child, not the adult parent.

Kind of like by contrast, Your Honor, there's -- the statute that was enacted in 1993, when they also, again, extended the limitations period under this case, created a cause of action for a victim against a perpetrator for a claim for damages if the perpetrator had made money. Say, they sold a book, received proceeds from talking about their participation in the crime. Then the victim now has a right of action against those proceeds.

When you look at the legislative history for that statute there was discussion about whether or not that claim to proceeds could extend to a parent or family member of the child. It was specifically addressed in the legislation. There was discussion about the scope of that. And, ultimately, a parent of a surviving victim -- or withdraw.

The surviving parent of a victim who passed away and died as a result of the crime had a right of action. But the -- if the victim had not died, the parent didn't have a right of action.

There's a statute where a parent's entitlement to proceeds as a result of a child victimization was discussed, it was not part of the legislative history in this case, and therefore, the statutory

interpretation languages, it's not intended to be there.

THE COURT: All right. Thank you.

All things considered, I'm going to deny the motion in part relative to the mother's claim, the statute of limitations aspect. And I'm going to grant the motion in part relative to the Constitutional claims. Okay?

MS. BARKER: Okay.

THE COURT: So what I need is a -- and that's without prejudice to further development on the statute of limitations aspect of it. I just don't feel comfortable at this point deciding it on the 12(b)(5) motion. Okay?

MS. BARKER: Thank you, Your Honor.

THE COURT: So what I need is a proposed order. Ms. Barker, you want to go ahead and submit it and run it by Ms. McLeod?

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MS. BARKER: I'm happy to do that.

THE COURT: Okay. Thank you.

MS. BARKER: I appreciate your time today, Your Honor.

THE COURT: Thank you.

MS. BARKER: Thank you.

THE COURT: That's what I'm here for.

MS. McLEOD: Thank you, Your Honor.

THE COURT: Thank you.

[Proceeding concluded at 9:52 a.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans audio/video which resulted in audio distortion and/or audio cutting out completely were experienced and are reflected in the transcript.

Shawna Ortega

Shawna Ortega, CET*562

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

HEARING REQUESTED

NOTICE OF INTENT TO APPEAR ELECTRONICALLY

DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR ORDER SHORTENING TIME

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Case Number: A-22-853154-C

COME NOW Defendants CLARK COUNTY SCHOOL DISTRICT (CCSD), MARIBEL McADORY, JEFFREY GRANGER, and PAMELA NORTON-LINDEMUTH (collectively the CCSD Defendants), through their attorneys JAMES R. OLSON, ESQ., WALTER R. CANNON, ESQ., and STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and hereby submit their Motion To Stay Pending Supreme Court Decision on Petition for Writ of Mandamus and Request for Order Shortening Time. This Motion and Request are made and based on the pleadings and papers on file herein, the Declaration of counsel set forth herein, the following points and authorities, and the arguments of counsel at the time of hearing as the Court may entertain.

EDCR 2.26 DECLARATION OF STEPHANIE A. BARKER, ESQ. IN SUPPORT OF REQUEST FOR ORDER SHORTENING TIME

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

STEPHANIE A. BARKER, ESQ. hereby declares under penalty of perjury as follows:

1. Declarant is an attorney duly licensed to practice law and in good standing with the State Bar of Nevada, associated in an of-counsel capacity with the law firm of Olson Cannon Gormley & Stoberski.

2. Declarant is one of the attorneys representing the interests of the CCSD Defendants in the above-captioned matter of *B.D. and J.D. v. Clark County School District, et al.*, EJDC Case No. A-22-853154-C, Department 13.

3. This Declaration is made in support of Defendants' Request for an Order Shortening Time as to the Motion for Stay, in accordance with EDCR 2.26.

4. The facts set forth in this Declaration are known to Declarant personally, or are based upon Declarant's information and belief, and Declarant is competent to testify under oath regarding the same.

5. On August 4, 2022, this Court entertained oral argument regarding the CCSD Defendants' NRCP 12(b)(5) Motion to Dismiss Plaintiffs' Complaint as to Plaintiff J.D., and as to both Plaintiffs' Nevada Constitutional claims. This Court denied the Motion to Dismiss as to

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Plaintiff J.D.'s claims and granted the Motion to Dismiss as to Plaintiffs' Nevada Constitutional claims. The Court's Order in this regard was entered on August 15, 2022, with Notice of Entry of the Order filed August 16, 2022.

6. Defendants respectfully believe this Court's August 15, 2022, Order denying the Motion to Dismiss Plaintiff J.D.'s claims as beyond the statute of limitations, is erroneous. Accordingly, Defendants have prepared a Petition for Writ of Mandamus concerning the ruling, to be filed in the Nevada Supreme Court.

7. The parties are scheduled to meet for an Early Case Conference on October 14, 2022, and absent this Court's entry of a stay pending the Supreme Court's decision on the Petition for Writ of Mandamus, formulation of a case discovery plan will necessarily include discovery concerning Plaintiff J.D.'s claims, necessitating additional time and expense by both parties.

8. Denial of the stay forces Defendants to address a claim that is time barred and no longer viable, therefore, the object of the writ petition – namely imposition of the statute of limitations so as to avoid fatally flawed litigation – will be defeated if the stay is denied.

9. Defendants respectfully assert they are likely to prevail on the Petition because: 1) there is no Nevada authority for application of the NRS 11.215 minor victim of sex abuse exception, to the minor victim's parent who is seeking recovery for their own alleged damage; and 2) the plain language of the statute applies to an action against the perpetrator of the assault/abuse. The CCSD Defendants are not alleged to be the perpetrators of abuse of the minor Plaintiff and the exception does not apply to suit against the CCSD Defendants.

10. Based on the foregoing, Defendants request this Court issue an Order staying this case in its entirety pending the Supreme Court's decision on the Petition for Writ of Mandamus.

11. The foregoing circumstances constitute good cause and justify shortening time for hearing of this Motion for Stay in order to allow prompt procession with the Petition for Writ of Mandamus without delay of the underlying proceeding beyond the time necessary to obtain timely

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Supreme Court review of the District Court's ruling regarding whether Plaintiff J.D.'s claims are barred, without exception, by the statute of limitations.

DATED this 19th day of September, 2022.

STEPHANIE A. BARKER

ORDER SHORTENING TIME

For good case appearing as set forth in the foregoing Declaration of counsel, it is hereby:

ORDERED that:

__x__ Defendants' Request for an Order Shortening Time for hearing on Defendants' Motion to Stay this case pending the Nevada Supreme Court's decision on Defendants' Petition for Writ of Mandamus, is **granted**, and the Motion is set on a shortened time to be heard on the 10th day of October, 2022, at the hour of 9:00 a.m./~~p.m.~~.

OR

~~_____ Defendants' Request for an Order Shortening Time for hearing on Defendants' Motion to Stay this case pending the Nevada Supreme Court's decision on Defendants' Petition for Writ of Mandamus, is **denied**, and the Motion shall be set in the ordinary course of the Court's calendar.~~

IT IS SO ORDERED. ~~DATED: _____~~

Dated this 3rd day of October, 2022

DISTRICT COURT JUDGE

TMB

B8A 179 55D0 C87D
Mark R. Denton
District Court Judge

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO STAY
PENDING DECISION ON PETITION FOR WRIT OF MANDAMUS

A motion to stay the District Court proceeding while an appeal or original writ petition is pending must first be brought in the District Court. NRAP 8(a)(1). *See also Hansen v. Eighth Judicial Dist. Crt.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). "This requirement is grounded in the district court's vastly greater familiarity with the facts and circumstances of the particular case." *Nelson v. Heer*, 121 Nev. 932, 836, 122 P.3d 1252, 1254 (2005). Not until or unless the District Court has denied the motion may the party seeking a stay file a motion for stay with the appellate court. *See* NRAP8(a)(2).

In deciding whether to issue a stay, the Court generally considers : "(1) whether the object of the appeal or writ petition will be defeated if the stay is denied: (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits of the appeal or writ petition." NRAP 8(c). "Litigation costs, even if potentially substantial, are not irreparable harm. Similarly, a mere delay in pursuing discovery and litigation normally does not constitute irreparable harm." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) (*citing Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000)). While any one factor does not carry more weight than the others, "if one or two factors are especially strong, they may counterbalance other weak factors." *Mikohn Gaming Corp., supra* at 253, and 39. Notwithstanding, on appeal from an order refusing to compel arbitration, the first stay factor (i.e. whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied) "takes on added significance and generally warrants a stay of trial court proceeding pending resolution of the appeal." *Id.*

Addressing the NRAP 8(c) factors, and recognizing that neither the litigation costs to Defendants, nor delay in pursuing discovery by Plaintiffs, constitute irreparable harm, nonetheless the stay is warranted because: 1) the object of the writ petition will be defeated if the stay is denied; and 2) The absence of precedence on this issue, and the legislative history of

the NRS 11.215 exception in question, render it likely Defendants will prevail on the merits of the writ petition.

First, the statute of limitations renders Plaintiff J.D.'s claims time-barred as a matter of law and denial of the stay forces the public defendants to litigate a claim which is not viable as a matter of law. The purpose of Rule 12(b) is to provide for dismissal of claims which a are *fatally flawed in their legal premises and destined to fail,* even if everything alleged in the complaint is true, thus sparing litigants the burdens of unnecessary pretrial and trial activity. *See Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys., Inc.,* 988 F.2d 1157, 1160 (Fed. Cir. 1993) (discussing the purpose of FRCP 12(b)(6), the federal analogue to NRCP 12(b)(5)), and *Mayer v. Mylod,* 988 F.2d 65, 638 (6th Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6)). The purpose of the limitations period , object of the writ petition, is thwarted if stay is not granted.

Second, there is no Nevada authority supporting application of the NRS 11.215 exception to the personal injury limitations period either 1) to the adult mother of a child victim of sexual abuse, or 2) to a non-perpetrator defendant. The legislative history establishes the purpose of the exception to avoid a time bar for minor victims who may have suppressed memory of events and who are without legal capacity to seek redress against an abuser at the time of their victimization. Plaintiff J.D., as the minor's mother, was timely made aware of the events she alleges constituted assault of her son, she has not repressed memory of the events involving her son, and she is not a person for whom the limitation exception is intended. Further, even if the NRS 11.215 exception is deemed applicable to a claim for personal injury by the minor's parent, the CCSD Defendants were not the perpetrators of an assault of the minor Plaintiff, and the exception does not permit suit against these moving Defendants.

The purpose of the NRCP 12(b)(5) is to allow a court to eliminate actions that are *fatally flawed in their legal premises and destined to fail,* thus sparing litigants the burdens of unnecessary pretrial and trial activity. *Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys., Inc.,* 988 F.2d 1157, 1160 (Fed. Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6), the federal analogue to Nev. R. Civ. P. 12(b)(5)). NRS 11.215. does not extend the limitations period for actions against Defendants who are not the perpetrators of sex abuse to the minor victim Plaintiff,

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and further was not intended to waive limitations periods for the adult parent who was timely noticed of the alleged assault of her minor child. Accordingly, Plaintiff J.D. is not entitled to legal relief against the CCSD Defendants, even if everything alleged in the complaint is true. *Mayer v. Mylod,* 988 F.2d 65, 638 (6th Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6)). Therefore, Stay of the District Court proceeding is warranted.

CONCLUSION

Based on the foregoing, the CCSD Defendants respectfully request this case be stayed pending the Supreme Court's decision on Defendants' Petition for Writ of Mandamus concerning this Court's August 15, 2022, Oder denying Defendants' Motion to Dismiss Plaintiff J.D.'s claims as beyond the statute of limitations.

DATED this 27th day of September, 2022.

OLSON CANNON GORMLEY & STOBERSKI

By: _____

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CERTIFICATE OF SERVICE

On the 29 day of September 2022, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS AND REQUEST FOR ORDER SHORTENING TIME, on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following:

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KIMBERLY A. NELSON, ESQ.
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

B. D., Plaintiff(s) vs. Clark County School District, Defendant(s)	CASE NO: A-22-853154-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Shortening Time was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/3/2022

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DISTRICT COURT

CLARK COUNTY, NEVADA

B. D., a minor by and through his natural mother and parent, J.D.; J.D., an individual, Plaintiffs, vs. CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, and individual; DOE STUDENT 3, and individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive, Defendants.	CASE NO.: A-22-853154-C DEPT NO.: 13 **OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS** **Hearing Date: October 10, 2022** **Hearing Time: 9:00 a.m.**

Plaintiffs, B.D., a minor, by and through his natural mother and parent, J.D., and J.D., an individual,[1] by and through their counsel, Christian M. Morris, Esq., Kimberly A. Nelson, Esq.,

[1] Plaintiffs' names have been kept confidential pursuant to NRS 200.3771.

Case Number: A-22-853154-C

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and Erica H. Suzuki, Esq. of **NETTLES | MORRIS**, hereby submit the following *Opposition to Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus*.

This Opposition is based the pleadings and papers on file, the following Memorandum of Points and Authorities, and oral argument as may be allowed by counsel at the time of hearing.

DATED this 7th day of October, 2022.

NETTLES | MORRIS



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MEMORANDUM OF POINTS & AUTHORITIES

I.

INTRODUCTION & BACKGROUND INFORMATION

On May 25, 2022, Plaintiffs, B.D., a minor, and his mother, J.D., (collectively "Plaintiffs"), filed suit against Defendants due to continued and repeated sexual abuse that B.D. endured at the hands of classmates from August to November of 2016 because Defendants failed to properly supervise students in the elementary school bathroom.[2] Plaintiffs allege that due to Defendants' actions and the unwelcomed and highly inappropriate sexual assault suffered by B.D., Plaintiffs have suffered trauma, anxiety, and severe emotional distress which required medical and psychological treatment.[3]

Defendants argue a stay pending writ relief from the Supreme Court is appropriate because the Court's application of NRS 11.215 to J.D. was erroneous and J.D.'s claims are barred by the statute of limitations. However, Defendants did not provide adequate justification for granting a stay because Defendants failed to evaluate the harm to all parties based on the circumstances of this case. In effect, Defendants' request for a stay merely restates arguments already raised in the request to dismiss J.D.'s claims and fails to evaluate how or why the parties will be prejudiced by staying this litigation. All the same, when the factors for granting a stay are properly evaluated, it is reasonable to find that a stay is not justified, and Defendants will not suffer harm if discovery continues while the petition for writ relief is considered. As such, there is a reasonable basis to deny any request to stay this litigation and permit discovery to continue while the request for writ relief proceeds.

II.

LEGAL STANDARD FOR STAYING LITIGATION

Generally, when a decision is challenged and a stay is requested, the court considers the following factors: (1) whether the object of the appeal will be defeated if the stay is denied, (2) whether the party challenging the decision will suffer irreparable or serious injury if the stay is denied, (3) whether respondent will suffer irreparable or serious injury if the stay is granted, and

[2] *See Plaintiffs' Complaint* at 3:3-20, incorporated by reference pursuant to EDCR 2.27.
[3] *Id*. at 6:11-21.

(4) whether the party challenging the decision is likely to prevail.[4] No one factor carries more weight than the others, but if one or two factors are especially strong, they may counterbalance other weak factors.[5] The Court noted that "in certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis."[6]

III.

LEGAL ARGUMENT

Defendants seek an order staying this case in its **entirety** because Defendants believe that NRS 11.215 does not apply to the J.D.'s claims. Defendants recognize that neither the litigation costs to Defendants, nor delay in pursuing discovery by Plaintiffs, constitute irreparable harm, but claim the stay is warranted because 1) the object of the writ petition will be defeated if the stay is denied and 2) the absence of precedence on this issue, and the legislative history of the NRS 11.215 exception in question, render it likely Defendants will prevail on the merits of the writ petition.

However, Defendants' request to stay this litigation is inappropriate and should be denied because (1) Plaintiffs will suffer significant and irreparable harm and injury if a stay is granted due to the nature of the claims involved; (2) Defendant will suffer no prejudice if a stay is not granted because J.D.'s claims are entirely derivative of B.D.'s claims, which must be litigated regardless of the outcome of the writ petition; and (3) Defendants are unlikely to prevail in their request for writ relief. Based on the *McCrea* factors, there is no justification for granting a stay at this time.

A. Plaintiffs Will Suffer Significant and Irreparable Harm and Injury if a Stay is Granted.

Plaintiffs will suffer injury if the stay is granted as the case will be unreasonably delayed awaiting the denial of the Petition. Defendants entire motion argues that the statute of limitations renders J.D.'s claims time-barred and not viable as a matter of law. However,

[4] *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).
[5] *Id.*
[6] *Id.* at 120 Nev. at 253, 89 P.3d at 39.

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Defendants fail to mention that its request to stay the **entire** case will prejudice B.D.'s claims. B.D.'s claims are not at issue and are viable claims. As such, discovery can be conducted regardless of whether Defendants prevail in their writ petition. Notably, Plaintiff J.D.'s claims are entirely derivative of the sexual abuse that B.D. suffered due to Defendants' actions. Denying the stay will not defeat the purpose of the Petition, as the focus in this case is on the sexual abuse of B.D., whose claims will be litigated regardless of the fate of J.D.'s claims. Simply put, Defendants fail to acknowledge that most of the discovery that will take place is necessary regardless of the fate of J.D.'s claims.

Furthermore, Defendants ignore the sensitive nature of sexual assault claims and the emotional distress associated with stigma, fear, and trauma related to sexual abuse of a minor. Plaintiffs will suffer significant and irreparable emotional harm and further injury if this litigation is delayed. Defendants note that any delay in discovery is not irreparable harm, yet such arguments fail to account for the delay in concluding this litigation so that Plaintiffs can emotionally move on from the trauma that these events caused.[7] Arguably, the emotional and psychological trauma associated with litigating these claims is significant and to delay this litigation in its entirety will unnecessarily force Plaintiffs to endure additional emotional distress for extended periods of time, and relive these events.

Accordingly, this case involves unique circumstances and injuries where "the adverse effects of such abuse may perceptibly increase for prolonged periods, <u>if not an entire lifetime</u>."[8] In short, based on the facts of this case and nature of Plaintiff's injuries, there is a significant risk of irreparable harm to Plaintiffs if a stay is granted and this litigation is needlessly delayed.

B. Defendants Will Not Suffer Significant or Irreparable Harm If a Stay is Not Granted Because J.D.'s Claims are Entirely Derivative of B.D.'s Claims.

Here, there is no risk of irreparable harm to Defendants if a stay is not granted. Defendant do not address how or why they will be prejudiced, except to acknowledge that additional time and expense will be incurred to conduct discovery before the writ petition is

[7] *See Defendants' Motion* at 5:25-6:2.
[8] *Id*. (emphasis added).

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considered.[9] Yet, Defendants already concede that increased litigation costs are not irreparable harm.[10] As such, there is no prejudice or irreparable harm to Defendants if a stay is not granted and discovery continues.

In short, the key issues that will require extensive discovery are the sexual abuse claims that involve B.D. and the actions of Defendants in failing to protect and supervise students in school bathrooms. These issues are central to this case and discovery will take place on these issues no matter the outcome of future determinations about NRS 11.215 and its application to J.D.'s claims. As a result, a stay is not necessary to protect Defendants from prejudice, not will it suffer irreparable harm or lose any opportunities even if discovery proceeds on the issue of J.D.'s injuries and damages.

C. Defendants are Unlikely to Prevail in Their Request for Writ Relief Based on the Plain Language of NRS 11.215 and Legislative Intent Behind It.

A stay is not justified because it is unlikely that Defendants will prevail in their writ petition, and even if they do, their position will be reasonably unchanged without a stay in place. Effectively, Defendants argue that a stay is justified based on arguments about the ambiguity and purpose of NRS 11.215 that were previously raised. Considering the plain language of the statute, it is unlikely that Defendants will prevail in obtaining writ relief.

A writ of mandamus can compel performance of acts required by law as a duty stemming from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion.[11] Such discretion is generally not exercised to consider petitions for extraordinary relief challenging the denial of a motion to dismiss.[12] Additionally, the right to appeal a judgment generally constitutes a speedy and adequate remedy that precludes writ relief.[13]

However, writ relief can be appropriate when a case is at the early stages of litigation and policies of judicial administration apply.[14] For example, if "no factual dispute exists and the

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[9] *See Defendants' Motion* at 3:8-11.
[10] *Id*. at 5:25-26.
[11] *International Game Tech. v. Dist. Ct*., 124 Nev. 193, 197, 124 Nev. 193, 179 P.3d 556, 558 (2008); *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).
[12] *International Game Tech*., 124 Nev. at 197-98, 179 P.3d at 558-59.
[13] *Id*.
[14] *Id*. at 198, 179 P.3d at 559.

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district court is obligated to dismiss an action pursuant to clear authority under a statute or rule, or an important issue of law needs clarification" considerations of judicial economy support granting a writ petition.[15] Here, there is no clear authority that justifies dismissing J.D.'s claims and no arbitrary or capricious exercise of discretion. Even more, Defendants failed to identify such a clear authority, statute, or rule that would require dismissal or delay.

Pursuant to NRS 11.215, claims for damages for injuries arising from sexual abuse of a minor can be brought "at any time after the sexual abuse or sexual exploitation occurred."[16] Specifically, NRS 11.215 permits recovery for injuries arising from sexual abuse as follows:

> An action to recover damages for an injury to a person arising from the sexual abuse or sexual exploitation of the plaintiff which occurred when the plaintiff was less than 18 years of age may be commenced against the alleged perpetrator or person convicted of the sexual abuse or sexual exploitation of the plaintiff at any time after the sexual abuse or sexual exploitation occurred.[17]

In fact, NRS 11.215 is identified by the Legislature as a law that permits "[a]ctions for damages for injury arising from sexual abuse or sexual exploitation of minor" which reasonably applies to J.D.'s claims.[18] Unfortunately, the law is ambiguous and can be interpreted as permitting J.D.'s claims, and therefore, requires statutory interpretation based on legislative intent.

When a statute's language is plain and unambiguous, the statute's plain language should be applied.[19] When the statute is subject to more than one reasonable interpretation, it is ambiguous, and the Court must look to legislative history and apply rules of statutory interpretation to determine the statute's meaning and application to a dispute. [20] Indeed, when construing an ambiguous statutory provision, the court must determine the meaning of the words used in a statute "by examining the context and spirit of the law or the causes which induced the Legislature to enact it."[21] Additionally, "statutory interpretations should not render

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[15] *Id*.
[16] NRS 11.215 (emphasis added).
[17] NRS 11.215(1) (emphasis added).
[18] NRS 11.215
[19] *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007).
[20] *Id.* at 404, 168 P.3d at 716.
[21] *Id.* at 405, 168 P.3d at 716 (internal quotations omitted).

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any part of a statute meaningless, and a statute's language should not be read to produce absurd or unreasonable results."[22]

The Court's determination that NRS 11.215 is ambiguous, thus permitting J.D.'s claims, is not erroneous and is supported by the legislative intent and purpose for eliminating any statute of limitations for claims involving sexual abuse of minors. The determination is not an arbitrary or capricious exercise of discretion, and no clear authority under a statute or rule mandates dismissal. As a result, Defendant are unlikely to obtain the writ relief requested.

Specifically, the legislature clearly chose to use language permitting claims to be brought for injury to "any person" in NRS 11.215, despite using the term "plaintiff" consistently thereafter.[23] Thus, such a distinction should not be rendered meaningless by limiting recovery only to the individual who suffered the sexual abuse.[24] Even more, the intent to eliminate any statute of limitations for claims arising from the sexual abuse of a minor was clear based on the changes made to the law. Accordingly, Defendants' arguments that determinations regarding the ambiguity of the statute were erroneous are not justified and do not support the extraordinary writ relief requested.

All the same, even if Defendants prevail and obtain the writ relief requested, they would be in almost an identical position if a stay is not granted. As previously explained, the harm or prejudice to Defendants is practically nonexistent based on the circumstances. Admittedly, in such a scenario the relief requested from the writ petition will be undermined, but such a factor is not persuasive considering the harm to Plaintiffs and lack of prejudice to Defendants if a stay is not granted. Such circumstances hardly justify staying this litigation and causing Plaintiffs irreparable harm.

At its core, the issue is that this case involves the sexual abuse of a minor which creates unique circumstances in which Plaintiffs will suffer unnecessary traumas and injuries if litigation is delayed, and the discovery to be conducted is required regardless of the fate of J.D.'s claims because her claims are entirely derivative of the claims of her minor child. Under

[22] *Id.* (internal quotations omitted).
[23] NRS 11.215.
[24] *Leven*, 123 Nev. at 403, 168 P.3d at 715.

such circumstances there is no reasonable justification for imposing a stay simply because Defendants believe they have a good chance of obtaining the writ relief sought. Effectively, the irreparable harm that Plaintiffs will suffer is significant compared to the minimal harm that Defendant might suffer if discovery proceeds in this case—if any harm is experienced at all. Accordingly, Plaintiffs respectfully request that this litigation is not further delayed or stalled to await a determination regarding the writ relief Defendants requested.

V.

CONCLUSION

Based on the forgoing, Defendants have failed to establish as a matter of fact or law that the balance of interests weighs in favor of staying this litigation. The unique facts and circumstances of this case support finding that Plaintiffs will experience significant and irreparable harm from a stay while Defendants will suffer minimal if any harm if a stay is not granted. Under such circumstances and considering the unique nature of claims related to sexual abuse of a child, a stay is not justified or appropriate in this case, and Defendants' Motion should be DENIED at this time.

RESPECTFULLY SUBMITTED this 7th day of October, 2022.

NETTLES | MORRIS



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CERTIFICATE OF SERVICE

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 8.02, I certify that on the 7h day of October, 2022, a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS** was served to the following parties by electronic transmission through the Odyssey eFileNV system addressed as follows:

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Walter R. Cannon, Esq.
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Attorneys for Defendants

/s/ Thalia V. Gomez
An Employee of NETTLES | MORRIS

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., Plaintiff(s), vs. CLARK COUNTY SCHOOL DISTRICT, Defendant(s).	CASE NO: A-22-853154-C DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

MONDAY, OCTOBER 10, 2022

RECORDER'S TRANSCRIPT OF HEARING RE: DEFENDANT'S MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS

APPEARANCES VIA VIDEO CONFERENCING:

For the Plaintiff(s): KIMBERLY A. NELSON, ESQ.

For the Defendant(s): STEPHANIE A. BARKER, ESQ.

RECORDED BY: JENNIFER GEROLD, COURT RECORDER

Las Vegas, Nevada; Monday, October 10, 2022

[Proceeding commenced at 9:12 a.m.]

THE COURT: Okay. Page 8, B.D. versus Clark County School District.

MS. BARKER: Good morning, Your Honor, Stephanie Barker, 3176, appearing for the CCSD Defendants.

MS. NELSON: And good morning, Your Honor, Kimberly Nelson, 15295, appearing for Plaintiffs.

THE COURT: All right. I've got Defendant's motion to stay pending Supreme Court decision on petition for writ of mandamus. All right. One of the questions that I was going to pose is whether or not there's been a filing in the Supreme Court as of this date and I note in reviewing the record that I see a receipt for documents from the Supreme Court, apparently, a petition was filed on Friday, right?

MS. BARKER: That's correct, Your Honor.

THE COURT: Petition for writ of mandamus, so. Okay. Go ahead with the motion.

MS. BARKER: Your Honor, as set forth in the motion, we are seeking a stay pending the Supreme Court's decision on the writ. When the Court looks at the factors set forth in Nevada Rule of Appellate Procedure 8(c) and the *Mikohn Gaming Corp versus McCrea* case, Defendants believe the object of the writ petition will be defeated if the stay is denied, namely, litigation will go forward on a claim that is barred by the statute.

We also believe the absence of precedence on this issue combined with the legislative history render it likely that Defendants will prevail on the merits of this claim. Namely, that NRS 11.215 is not an exception that applies to the adult Plaintiff in this case. And on that, Your Honor, we would submit.

THE COURT: All right. Thank you. Response.

MS. NELSON: Thank you, Your Honor. Defendants seek an order staying this case in its entirety. The writ is to Plaintiff J.D.'s claims only which are entirely derivative of Plaintiff B.D.'s claims which are viable. Regardless of the outcome of the writ, B.D.'s claims will continue and discovery will be conducted. So a stay as to the entirety of the case, we believe, is inappropriate and we would ask the Court that the stay be denied in its entirety.

THE COURT: All right. Last word, Ms. Barker.

MS. BARKER: No, Your Honor. I note that in the opposition that we received from Plaintiffs, they've asserted that there would be irreparable harm due to delay in the proceeding. And our response to that, Your Honor, is that there's been three and a half years since Plaintiff J.D. received notice of these events before she even filed suit. So we believe that argument to be disingenuous and submit.

THE COURT: All right. Here's what I'll do: I'll grant a temporary stay. The question I have -- now that you filed your petition in the Supreme Court, you can seek further stay in the Supreme Court. The question I have is 21 days or 30 days. You probably want 30 days, right?

MS. BARKER: Say that again, Your Honor, you cut out on the

-- the recording.

THE COURT: Okay. I was going to -- I'm granting a temporary stay --

MS. BARKER: Okay.

THE COURT: -- the question I have, it's going to be 21 days or 30 days. You filed your petition so you have something pending in the Supreme Court now. You can seek further stay in the Supreme Court.

MS. BARKER: We'd ask for 30 days, Your Honor, just to allow time to get an order from the court.

THE COURT: I think that's appropriate. And I note that there are no upcoming proceedings in this case at this time so I'll grant a temporary stay, 30 days, and further stay can be sought in the Supreme Court. Okay?

MS. BARKER: Thank you, Your Honor, I appreciate it.

THE COURT: Okay.

MS. NELSON: Thank you, Your Honor.

THE COURT: Submit the proposed order and run it by opposing counsel and I'll process it as soon as I get it, okay?

MS. BARKER: I will do that, Your Honor. Thank you.

THE COURT: Okay. Thank you.

MS. NELSON: Thank you.

[Proceeding concluded at 9:16 a.m.]

* * * * * * *

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Jennifer P. Gerold
Court Recorder/Transcriber

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT

JAMES R. OLSON, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

NOTICE OF ENTRY OF ORDER GRANTING TEMPORARY STAY OF PROCEEDINGS RE: DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS

/ / /

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Case Number: A-22-853154-C

TO: ALL PARTIES OF INTEREST AND THEIR COUNSEL OF RECORD;

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Court entered an Order Granting Temporary Stay of Proceedings RE: Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus, a copy of which is attached hereto, filed on the 10th day of October, 2022.

DATED this 11th day of October, 2022.

OLSON CANNON GORMLEY & STOBERSKI

By: 

JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
WALTER R. CANNON, ESQ.
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CERTIFICATE OF SERVICE

On the 11 day of October, 2022, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **NOTICE OF ENTRY OF ORDER GRANTING TEMPORARY STAY OF PROCEEDINGS RE: DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS** on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

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Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

Date of Hearing: 10/10/2022
Time of Hearing: 9:00 a.m.

ORDER GRANTING TEMPORARY STAY OF PROCEEDINGS RE: DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS

B.D. v. CCSD, et al.

THIS MATTER having come on for hearing before the above-entitled Court on the 10th day of October, 2022, at 9:00 a.m., STEPHANIE A. BARKER, ESQ., of the law firm OLSON CANNON GORMLEY & STOBERSKI appearing for the CCSD Defendants, and KIMBERLY A. NELSON , ESQ., of the law firm NETTLES | MORRIS appearing for Plaintiffs; and

THE COURT HAVING read and considered the CCSD Defendants' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS, as well as Plaintiffs' Opposition thereto, and having entertained the arguments of counsel;

IT IS HEREBY ORDERED that:

A temporary stay of all District Court proceedings is hereby granted for thirty (30) days from the date of entry of this Order to allow the CCSD Defendants to seek a stay in the Nevada Supreme Court.

IT IS SO ORDERED. ~~DATED.~~

Dated this 10th day of October, 2022

DISTRICT COURT JUDGE

DA9 974 9DBC 9BEF TMB
Mark R. Denton
District Court Judge

Submitted by:

OLSON CANNON GORMLEY & STOBERSKI

By: /s/ *Stephanie A. Barker*
STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 003176
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Attorneys for Defendants
Clark County School District, Maribel McAvoy, Jeffrey Granger, and Pamela Norton-Lindemuth

Approved as to Form and Content by:

NETTLES | MORRIS

By: /s/ *Kimberly A. Nelson*
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Nan Langenderfer

From: Kimberly Nelson <kimberly@nettlesmorris.com>
Sent: Monday, October 10, 2022 10:13 AM
To: Stephanie Barker
Cc: Nan Langenderfer; Linda Roth; Thalia Gomez
Subject: RE: BD & JD v. CCSD, et al.

Stephanie,

Thank you for preparing the Order.

I have no proposed change. You may affix my e-signature to submit to the Court.

Kimberly A. Nelson, Esq.
Associate Attorney
NETTLES | MORRIS
2250 Corporate Circle, Suite 390
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From: Stephanie Barker <sbarker@ocgas.com>
Sent: Monday, October 10, 2022 9:38 AM
To: Kimberly Nelson <kimberly@nettlesmorris.com>
Cc: Nan Langenderfer <nlangenderfer@ocgas.com>; Linda Roth <lroth@ocgas.com>
Subject: BD & JD v. CCSD, et al.

Good morning Kimberly:

Attached please find a draft Order regarding this morning's hearing on Defendants' Motion for Stay.

Please let me know if you would like changes, or, in the alternative, if it is acceptable to submit with your electronic signature.

Thank you.

Stephanie A. Barker, Esq.
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DISTRICT COURT
CLARK COUNTY, NEVADA

B. D., Plaintiff(s) vs. Clark County School District, Defendant(s)	CASE NO: A-22-853154-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/10/2022

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Linda Roth	lroth@ocgas.com
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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

NOTICE OF ENTRY OF ORDER GRANTING TEMPORARY STAY OF PROCEEDINGS RE: DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS

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Case Number: A-22-853154-C

TO: ALL PARTIES OF INTEREST AND THEIR COUNSEL OF RECORD;

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Court entered an Order Granting Temporary Stay of Proceedings RE: Defendants' Motion to Stay Pending Supreme Court Decision on Petition for Writ of Mandamus, a copy of which is attached hereto, filed on the 10th day of October, 2022.

DATED this 11th day of October, 2022.

OLSON CANNON GORMLEY & STOBERSKI

By: _____

JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
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CERTIFICATE OF SERVICE

On the 11 day of October, 2022, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **NOTICE OF ENTRY OF ORDER GRANTING TEMPORARY STAY OF PROCEEDINGS RE: DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS** on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

B.D., a minor by and through his natural mother and parent, J.D.; J.D., an individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a political subdivision of the State of Nevada; DOE TEACHER, an individual; MARIBEL MCADORY, an individual; JEFFREY GRANGER, an individual; PAMELA NORTON-LINDEMUTH, an individual; DOE STUDENT 1, an individual; DOE STUDENT 2, an individual; DOE STUDENT 3, an individual; DOES 1 through 10, inclusive; and ROE CORPORATIONS 11 through 20, inclusive,

Defendants.

CASE NO. A-22-853154-C
DEPT. NO. 13

Date of Hearing: 10/10/2022
Time of Hearing: 9:00 a.m.

ORDER GRANTING TEMPORARY STAY OF PROCEEDINGS RE: DEFENDANTS' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS

B.D. v. CCSD, et al.

THIS MATTER having come on for hearing before the above-entitled Court on the 10th day of October, 2022, at 9:00 a.m., STEPHANIE A. BARKER, ESQ., of the law firm OLSON CANNON GORMLEY & STOBERSKI appearing for the CCSD Defendants, and KIMBERLY A. NELSON , ESQ., of the law firm NETTLES | MORRIS appearing for Plaintiffs; and

THE COURT HAVING read and considered the CCSD Defendants' MOTION TO STAY PENDING SUPREME COURT DECISION ON PETITION FOR WRIT OF MANDAMUS, as well as Plaintiffs' Opposition thereto, and having entertained the arguments of counsel;

IT IS HEREBY ORDERED that:

A temporary stay of all District Court proceedings is hereby granted for thirty (30) days from the date of entry of this Order to allow the CCSD Defendants to seek a stay in the Nevada Supreme Court.

IT IS SO ORDERED. ~~DATED.~~

Dated this 10th day of October, 2022

DISTRICT COURT JUDGE

DA9 974 9DBC 9BEF TMB
Mark R. Denton
District Court Judge

Submitted by:

OLSON CANNON GORMLEY & STOBERSKI

By: /s/ *Stephanie A. Barker*
STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 003176
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Attorneys for Defendants
Clark County School District, Maribel McAvoy, Jeffrey Granger, and Pamela Norton-Lindemuth

Approved as to Form and Content by:

NETTLES | MORRIS

By: /s/ *Kimberly A. Nelson*
KIMBERLY A. NELSON, ESQ.
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Nan Langenderfer

From: Kimberly Nelson <kimberly@nettlesmorris.com>
Sent: Monday, October 10, 2022 10:13 AM
To: Stephanie Barker
Cc: Nan Langenderfer; Linda Roth; Thalia Gomez
Subject: RE: BD & JD v. CCSD, et al.

Stephanie,

Thank you for preparing the Order.

I have no proposed change. You may affix my e-signature to submit to the Court.

Kimberly A. Nelson, Esq.
Associate Attorney
NETTLES | MORRIS
2250 Corporate Circle, Suite 390
Henderson, NV 89074
Direct: 702-602-5312
Fax: 702-602-5313

From: Stephanie Barker <sbarker@ocgas.com>
Sent: Monday, October 10, 2022 9:38 AM
To: Kimberly Nelson <kimberly@nettlesmorris.com>
Cc: Nan Langenderfer <nlangenderfer@ocgas.com>; Linda Roth <lroth@ocgas.com>
Subject: BD & JD v. CCSD, et al.

Good morning Kimberly:

Attached please find a draft Order regarding this morning's hearing on Defendants' Motion for Stay.

Please let me know if you would like changes, or, in the alternative, if it is acceptable to submit with your electronic signature.

Thank you.

Stephanie A. Barker, Esq.
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Las Vegas, Nevada 89129
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DISTRICT COURT
CLARK COUNTY, NEVADA

B. D., Plaintiff(s) vs. Clark County School District, Defendant(s)	CASE NO: A-22-853154-C DEPT. NO. Department 13

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/10/2022

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