



PO Box 1327 • Madison WI 53701-1327
608-268-5074 (Madison) • 866-849-2536 (toll-free) • 608-256-3370 (fax)
Email: info@wisconsinfamilyaction.org
Web site: www.wisconsinfamilyaction.org

Testimony in Opposition to Assembly Bill 453
Assembly Committee on Children and Families
By Julaine K. Appling, WFA President
October 21, 2009

Thank you, Chairman Grigsby and committee members, for the opportunity to testify today on Assembly Bill 453. My name is Julaine Appling, and I am testifying today as president of Wisconsin Family Action, a statewide organization that represents tens of thousands of Wisconsin individuals and families who are concerned about strengthening and preserving marriage, family, life and liberty in our state.

The bill before us today is a very difficult bill to testify against, as I am sure you are aware. It directly pits our deep concern for the welfare of innocent children against our deep concern for religious liberty and the protection of our churches and ministries, as well as our respect for the rule of law in this state and country.

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

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

However, as with virtually all other crimes, cases involving sexual abuse of a child must have a reasonable and prudent statute of limitations as a safeguard to all concerned. The bill we are considering today bears all the earmarks of being what I refer to as a “knee-jerk” proposal. This type of bill typically comes about because of a particular case legislators hear about in which a person alleges he or she was abused by a trusted leader, perhaps, even a member of the clergy, but could not file a civil lawsuit because he or she was over the age of 35, as Wisconsin’s current statute of limitations requires in this situation. It has been my experience time and again that when legislators try to legislate for a specific incident, assuming it is typical, we get bad legislation—legislation that is far too broad, is over-reaching, and in general has disastrous intended or unintended consequences.

Whether intentional or not, this bill could significantly and directly affect churches, private and parochial schools, ministries, day cares, and organizations such as the Boy Scouts and Girl Scouts. AB 458 proposes to completely remove the statute of limitations for civil lawsuits involving childhood sexual abuse cases and opens a three-year window of opportunity for cases to be filed in situations where the statutes of limitations have already expired.

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

1) This bill not about protecting innocent children. We make this assertion because the bill does not deal with the root of the problem of child sexual abuse. If the legislature is truly in earnest about dealing with “child sexual abuse victims,” then it will take strong measures to deal with the incredible proliferation of child-pornography. Studies show a strong link between the use of child pornography and child molestation. We will stop winking at under-age sex in our state, particularly situations where one person is an adult and the other a minor. Family planning organizations that know of such situations and fail to report these felonies ought to be prosecuted not rewarded annually with millions of dollars of state taxpayer money through general purpose revenue. We should also not be condoning in our Human Growth and Development programs, or in proposals seeking to change to them, illegal under-age sexual activity by teaching teenagers the proper use of barrier methods of contraception.

Information to support these assertions is in the supplemental material attached to this testimony.

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

3) The bill targets the entity with which the perpetrator was associated, not the perpetrator. For purposes of the legislation, a “person” against whom damages are sought is extremely broadly defined to include an “individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.” While the authors insist that this bill is not targeting any particular group, that it is the perpetrator they are seeking to punish, the unique, breathtakingly broad definition of *person* belies this. It appears that the target, while perhaps not one particular group or church, is certainly not the perpetrator but the organization with which he/she was associated.

Proponents have mentioned how hard it is to try old cases. They’ve decried the lack of good evidence and the lack of witnesses and described how difficult it would be to find an attorney who would take such a case. Supporters are trying to convince us that few lawsuits would be brought. If that is the case, then why are they even considering such an open-ended law? The truth is we have no idea how many lawsuits might be brought if the statutes of limitation were removed and a three-year window of opportunity was opened for situations where the statutes have already run. If the scope of the bill were limited to an individual, rather than an all-encompassing definition of *person*, this argument might have some credibility. However, such is not the case.

4) All institutions named in the bills will not be treated equally. On the face of it, because public and private entities are mentioned in the definition of “person,” one could assume they would be treated the same. However, public and private entities will be treated significantly differently. Current law caps the liability of municipal bodies, such as school districts, at \$50,000 per person. The liability of private or not-for-profit entities, such as Christian schools or private day care centers, is not capped. Additionally, the law limits the amount of punitive damages against government entities, while no such limit or exemption exists for private entities, including churches.

This means a single law suit filed against a private school or a church, some 40 or more years after the fact, could result in the church or school paying hundreds of thousands of dollars in liability and damages, while a public school, for instance, would be liable for significantly less. Obviously, this inequity means different amounts being awarded to victims—and sets up a scenario where private entities become more likely targets for such lawsuits than government entities.

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

5) The current statute of limitations is generous and a “window” is likely unconstitutional. Several years ago, this legislature decided to increase the statutes of limitation from three years after a victim of child abuse turns 18 to when the victim is 35 years of age. This change put Wisconsin among the short list of states with very generous statutes of limitations in cases involving child sexual assault. Additionally, in 2004, former Wisconsin Attorney General Peg Lautenschlager issued an opinion in which she told legislators that opening a window of opportunity for cases in which the statutes of limitation had expired was likely unconstitutional. Since nothing has changed, it is reasonable to assume that advice is as good now as it was then.

In summary, this bill goes entirely too far and will do far more harm than good in the long run. If the statistics proponents have used are accurate, and if 20% of Wisconsin children have been sexually abused, then we have a problem far beyond the scope of this proposal. If proponents are truly interested in deterring child sexual abuse, then I would propose that they introduce legislation that cracks down on pornography—and specifically the child pornography that pedophiles use—and protect young girls from early sexual activity instead of teaching them how to engage in it. This I know—suspending the statute of limitations and leaving unsuspecting churches, schools, and other civic groups vulnerable ad infinitum to crippling liability and punitive damages will not take care of the problem. Rather, such actions will most assuredly create more and greater problems.

I urge you to vote against Assembly Bill 453.

Thank you for your time today.