

THE IMPORTANCE OF CIVIL JUSTICE TO SEXUAL ASSAULT SURVIVORS

**AND THE DEVASTATING CONSEQUENCES
OF “TORT REFORM”**



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THE IMPORTANCE OF CIVIL JUSTICE TO SEXUAL ASSAULT SURVIVORS AND THE DEVASTATING CONSEQUENCES OF “TORT REFORM”

INTRODUCTION

In 2008, 15-year-old Jessica Simpkins was raped by her church pastor, Brian Williams. Ohio’s Grace Brethren Church had hired Williams despite knowledge that he had previously sexually assaulted two girls. After Jessica came forward, Williams was criminally convicted and sent to jail. Jessica then pursued a civil suit against the church.

An Ohio jury awarded Jessica \$3.6 million, including non-economic damages,¹ to compensate her for PTSD, depression, suffering, pain and lost quality of life. But when her non-economic compensation was slashed drastically to \$350,000 because of Ohio’s “tort reform” law,² she appealed straight to the Ohio Supreme Court. She argued that such caps, which state lawmakers enacted to limit insurance industry payouts to victims of corporate and professional wrongdoing,³ also protect rapists and should not be permitted to violate the rights of child sexual assault victims.

But the Ohio Supreme Court disagreed. In a 2016 decision, the court upheld the law as specifically used against Jessica Simpkins.⁴ Two justices, Hon. Paul E. Pfeifer and Hon. William M. O’Neill, wrote scathing dissents. Wrote Pfeifer:

Today, we learn that “tort reform,” not surprisingly, had unintended consequences. It turns out that “tort reform” (and the justices who sanctioned it) also ensured that rapists and those who enable them will not have to pay in full for the damage they cause – even if they rape a child.

Continued O’Neill:

I cannot accept the proposition that a teenager who is raped by a pastor fits into a preordained formula for damages. ...No parent of a teenage daughter would accept that outcome as being just....

This child was raped in a church office by a minister, and a duly empaneled jury established an appropriate level of compensation for the loss of her childhood innocence. We have no right to interfere with that process. Shame on the General Assembly. The children are watching. And I for one do not like what they are seeing.

According to the Centers for Disease Control and Prevention, “1 in 3 women and 1 in 6 men have experienced sexual violence involving physical contact at some point in their lives.”⁵ Jessica Simpkins’

story illustrates two fundamental truths about the legal aftermath of such violence. First, access to the civil courts can be critically important to sexual assault survivors. They can face terrible financial burdens, like medical and mental health care bills, and also experience trauma, pain, suffering and lost quality of life. The National Sexual Violence Resource Center estimates that the average lifetime cost of rape per victim is \$122,461, with 81% of women and 35% of men reporting “significant short- or long-term impacts such as Post-Traumatic Stress Disorder (PTSD).”⁶ The criminal system isn’t designed to compensate them but the civil justice system is.

The criminal justice system also doesn’t hold perpetrators or culpable third parties (like churches) directly accountable to victims – but civil cases do. Indeed sometimes, compensation is far less important to survivors than establishing some type of accountability. Wade Robson, for example, who is pursuing civil litigation against Michael Jackson’s estate for the child sexual abuse he suffered, explained his reasons for suing:⁷

Robson said that a lawsuit he filed against the Jackson estate in 2013 was about doing ‘something good with this bad,’ not about remuneration. He saw the legal system as a ‘platform’ to tell his story in a scenario where the estate would ‘have to listen’ and ‘have to sit there.’

The second fundamental truth about these cases is that many states, like Ohio, have enacted “tort reform” laws that limit compensation to sexual assault survivors. The laws in effect in Ohio, for example, limit compensation with “one-size-fits-all” caps on compensation for non-economic injuries like trauma, suffering, and damaged lives. Such laws limit what sexual assault survivors can receive irrespective of what a judge and jury decide, and no matter how vicious an assault or devastating the harm. While both non-economic and punitive damages⁸ are often appropriate in “intentional” torts cases like assault, both have been targets of the “tort reform” movement (*see Appendix*).

In general, caps on non-economic damages have a disparate impact on women, children, seniors and the poor.⁹ In her research, University of Buffalo Law Professor Lucinda Finley found that such caps discriminate against women because “certain injuries that happen primarily to women,” including “sexual assault injuries,” are “compensated predominantly or almost exclusively through noneconomic loss damages.”¹⁰ Finley further explained,

[J]uries consistently award women more in noneconomic loss damages than men... [A]ny cap on noneconomic loss damages will deprive women of a much greater proportion and amount of a jury award than men. Noneconomic loss damage caps therefore amount to a form of discrimination against women and contribute to unequal access to justice or fair compensation for women.

Yet that’s not all. There is another tort limit that often blocks the ability of survivors to sue: overly-restrictive state statutes of limitations. Most state laws require someone to file a lawsuit within a very short period of time of their assault, with some variations for suing third parties like negligent companies. These laws keep many victims from even filing a civil case (*see Appendix*). Gradually, some

states are starting to lift those restrictions for sexual assault survivors, particularly for child abuse victims. For example, in 2019 New York passed a new law that gives child sexual abuse victims until age 55 to sue those responsible.¹¹ The law also provides a one-year “lookback” during which victims of any age or time limit can file a case.

This report illustrates many kinds of important cases that have been brought against those who commit sexual assault, as well as the third parties who facilitate it. Our study is far from an exhaustive list for two main reasons. First, it only describes very recent cases, *i.e.*, those that have been filed, resolved or pending since 2016. Because so many cases are brought every year, this report can only discuss a small, representative sampling of them. Second, it only describes cases that include state tort law claims.¹² The purpose is to make it easier to understand the severe consequences of state “tort reforms.” To further assist in understanding those consequences, the Appendix contains a state-by-state simplified list of common tort restrictions that benefit rapists and others who commit sexual violence: caps on non-economic damages, caps on punitive damages and overly-restrictive statute of limitations laws.

The following cases, which are grouped alphabetically according to the type of assailant, show both that a strong civil justice system can be vitally important to sexual assault survivors and that tort restrictions can protect a shocking catalog of lawbreakers, including rapists. Laws that limit access to the civil courts do a terrible disservice to sexual assault survivors, precluding them from holding fully accountable those responsible, as well as those who are in a position to prevent future abuse and assaults. In sum, laws that restrict the legal rights of sexual assault and abuse victims hurt us all.

ADULT CARE STAFF

A 23-year-old woman with severe developmental and intellectual disabilities was raped and physically harmed while in the care of Pensacola Cluster, a Florida intermediate care facility. In January 2019, the family sued the facility, its parent companies Florida Mentor and National Mentor Healthcare as well as employees after Cluster staff ignored reports of physical injury and changed behavior from her school. Medical care ultimately revealed that the woman had a broken hip and was pregnant. As of publication, the case was pending.¹³

AIRPLANE PASSENGERS

Allison Dvaladze reported to Delta Air Lines that crewmembers did nothing after she ran to the back of the plane when the “stranger sitting beside her grabbed her crotch while she was drifting to sleep in the darkened cabin and then repeatedly groped her as she protested and struggled out of her seat” during a 2016 overnight flight from Seattle to Amsterdam. The company offered her 10,000 SkyMiles as a “small token in hopes of easing some of the frustration and inconvenience you may have felt,” which she rejected as inadequate, ultimately filing a lawsuit in February 2018. According to the complaint,¹⁴ flight crew told her to “let it roll off your back” and “attempted to make Ms. Dvaladze return to and sit in the seat next to the man that had just committed a series of sexually motivated attacks against her.” Dvaladze sued Delta over its failed training, policies and procedures for dealing with sexually motivated attacks on flights.

Six months later, Katie Campos sued United Airlines in Illinois state court, alleging that flight attendants ordered her to sit down and ignored her pleas for help after the drunk passenger next to her “thrust his hand between her legs and forcefully grabbed her inner thigh and crotch” several times, the complaint stated. Crewmembers did reseat her but directly behind her harasser, who reportedly didn’t stop his assaults.

More recently, in January 2019, a mother filed suit on behalf of her daughter after she was sexually assaulted by a passenger on a United flight from Seattle to Newark, NJ. According to the complaint, the 16-year-old, flying alone for the first time to attend a young women’s leadership conference, felt doubly-victimized when flight crew did nothing to protect her after she reported that the man sitting next to her had put “his hand on her knee, then on her upper thigh and on her genitalia over her leggings” and “then slid his hand beneath the waistband of her pants,” and also failed to investigate or document the incident, allowing the perpetrator to walk off the flight afterward.

As of publication, these cases were pending.¹⁵

BOY SCOUT LEADERS

As reported by *Bloomberg* in December 2018, “The Scouts are fighting hundreds of claims, a rash of litigation fueled by the public emergence in 2012 of the organization’s own meticulous records of thousands of sexual abuse and misconduct allegations.¹⁶ Boy Scouts of America (BSA) executives say the documents – known as the ‘ineligible volunteer files’ – were part of their system for protecting kids by weeding out those who shouldn’t have been allowed to work with them. Plaintiffs and their lawyers call it something else: evidence of a massive cover-up that endangered other children and, in the words of [one lawsuit], ‘put scouting’s image and financial interests – its ‘brand’ – ahead of the safety of the scouts.’”

That argument, made in two Idaho lawsuits filed by 29 men against BSA, recently resulted in confidential settlements with 19 victims.¹⁷ As of publication, eight pending cases contend BSA “kept files on Scoutmasters accused of sexual misconduct, but didn’t reveal that information to parents, volunteers or others,” choosing instead to cover up the danger and allow it to continue. Among the victims currently seeking justice in the civil courts:

Robert William Lawson III, Jim Lloyd and two other ex-Gainesville, Georgia boy scouts, who were sexually abused decades ago by longtime Scoutmaster Fleming Weaver, say that BSA and leaders of Gainesville’s First Baptist Church (which sponsored the troop) were responsible for their assaults since they intentionally hid information about Weaver molesting other Scouts from law enforcement and the general public per instructions from BSA leadership. Similarly, in August 2018, five ex-Athens, Georgia boy scouts pursued civil claims against BSA, two of its regional governing councils and three Athens churches because they knew former Scout leader Ernest Boland had victimized other boys yet tried to suppress their stories in order to protect BSA’s reputation, which in turn enabled Boland to continue grooming and molesting boys. As reported by the *Atlanta Journal-Constitution*, “the Athens and Gainesville suits were filed within a one-time special provision that extended the statute of limitations in Georgia for childhood victims of sexual abuse seeking damages. That provision expired last year [in 2017].”¹⁸

In the wake of these and other pending cases, past and anticipated settlements, as well as the likelihood of facing countless civil lawsuits in the future, BSA has continued trying to avoid its responsibility to sexual assault victims.¹⁹ BSA is now reportedly considering seeking bankruptcy protection, which would freeze all victim lawsuits against it and allow the organization to negotiate and pay out lower settlement amounts than would have been levied by a jury. Moreover, BSA “has lobbied lawmakers in various states to limit its exposure – seeking to defeat measures that would give child victims more time to claim damages as adults,” spending nearly \$950,000 on lobbying in 2017, “four times its average over the previous five years.” At the same time, however, BSA is suing its own insurance companies, asking them to pay sex abuse-related claims and legal defense fees.

CLERGY AND RELIGIOUS INSTRUCTORS

Sexual abuse and assault by Roman Catholic priests, which started intensifying as a major national and international news story following the *Boston Globe's Spotlight* coverage in 2002,²⁰ is the best known and perhaps largest of clergy abuse scandals. According to a 2014 report filed with the UN Committee Against Torture, “Nearly every diocese in the US is implicated in covering up sexual violence by clergy,” and “In 2013 Vatican experts reported there are at least 100,000 victims in the US.”²¹ Last year, for example, a Pennsylvania grand jury report named at least 300 predator priests who abused more than 1,000 victims throughout the state, showing “a coherent, cohesive, pattern and practice of cover-up by high-level officials in the Catholic Church in Pennsylvania and the Vatican.”²² And in February 2019, Pope Francis held the Vatican’s first ever summit on the topic.²³

Yet this is not the only sex abuse scandal recently to plague religious institutions, or even the Catholic church. Nuns and other religious women have come forward to say they are also victims of sexual assault by priests.²⁴ A recent exposé by the *Houston Chronicle* and *San Antonio Express-News* found that “since 1998, roughly 380 Southern Baptist church leaders and volunteers [including pastors, ministers, youth pastors, Sunday School teachers and Deacons] have faced allegations of sexual misconduct,” leaving “behind more than 700 victims, many of them shunned by their churches, left to themselves to rebuild their lives.”²⁵ Several religious cults have also recently been exposed as either encouraging the abuse of children, tolerating and covering up such abuse, or making the sexual assault of women part of their regular practice.²⁶

The following cases of sexual abuse by clergy, with the assistance of religious institutions, are listed alphabetically by state.

DISTRICT OF COLUMBIA

In November 2018, six adults victimized by “endemic, systemic, rampant, and pervasive rape and sexual abuse” committed by Roman Catholic Church cardinals, bishops, monsignors, priests, sisters, lay leaders and members of church orders filed a class action suit against the U.S. Conference of Catholic Bishops (USCCB) and the Holy See. They seek compensation, medical monitoring, public admission of wrongdoing, compliance with statutory child sex abuse reporting requirements, full disclosure of 1940-now information regarding child rape/sexual abuse by clergy, institution of comprehensive protocols/procedures to compensate victims, prospective protections for potential clergy abuse victims and other relief. As of publication, the case was pending.²⁷

MINNESOTA

In November 2018, six adults, who suffered sexual abuse as children, argued that USCCB should be held liable under the “maintenance of a public hazard” or nuisance doctrine for concealing “the known histories and identities from the public, parishioners and law enforcement of clergy accused of sexually abusing children across the country.” When announcing the suit, victim

Joseph McLean told the press that he “chose to join the lawsuit because he wants the bishops to ‘come clean,’” adding “‘I’m here to protect kids’ and to give victims the opportunity to heal.” Moreover, to “abate the continuing nuisance,” victims demand court-ordered disclosure from USCCB of all information relating to the identity and history of agents, including priests, who had been accused of or committed child sexual abuse. As of publication, the case was pending.²⁸

MONTANA

In September 2018, a Montana jury levied a \$35 million verdict – \$31 million of which was punitive – against the local Jehovah’s Witnesses congregation and its worldwide headquarters. The verdict was on behalf of a 21-year-old woman who was sexually assaulted, molested and raped as a child in 1994-2007 by congregation member and relative Maximo Reyes. The defendants “failed to notify authorities after receiving notice of the abuse in 2004, instead choosing to handle the allegations internally pursuant to their own policies and procedures, so that Reyes was able to continue abusing” her before he was expelled from the Thompson Falls congregation and after leadership reinstated him 14 months later. As reported by the *Missoulian*, the judge also “ruled that Reyes’ criminal acts were foreseeable to the church leadership when they allowed him to return and that the congregation’s elders were not exempt from Montana’s mandatory reporting law when they learned of the allegations against him and didn’t turn him over to law enforcement.” After the jury verdict, defendants moved to reduce the punitive damages award to \$10 million under the state’s statutory cap – 3 percent of a defendant’s net worth or \$10 million, whatever is less. As of publication, a challenge to the cap was pending before the Montana Supreme Court.²⁹

NEW YORK

In September 2018, “[f]our men who were repeatedly sexually abused as children by a religion teacher at a Roman Catholic church reached a \$27.5 million settlement with the Diocese of Brooklyn and a local after-school program. The victims were repeatedly abused by Angelo Serrano, 67, who taught catechism classes and helped organize the religious education programs at St. Lucy’s-St. Patrick’s Church, in Clinton Hill, Brooklyn. The abuse occurred inside the church, in Mr. Serrano’s apartment located in an old schoolhouse behind the church and at the affiliated after-school program” from 2003 and 2009 when the boys were between the ages of 8 and 12.³⁰

PENNSYLVANIA

In September 2018, a clergy sex abuse victim and the mother of a current Catholic school student filed a class action suit against eight Pennsylvania dioceses – Allentown, Altoona-Johnston, Erie, Greensburg, Harrisburg, Philadelphia, Pittsburgh and Scranton – and their respective bishops after grand juries found they repeatedly failed to report and instead chose to protect hundreds of priests accused of raping and sexually abusing over 1,000 children. Two months later, adults alleging childhood clergy sexual abuse filed another class action against the

same eight dioceses, seeking relief under public nuisance and civil laws. To abate the continuing nuisance, the plaintiffs have asked for an order requiring that each Diocese publicly release information including the names of all abusing priests, their history of abuse, their pattern of grooming and sexual behavior and their last known address. As of publication, both cases were pending.³¹

TEXAS

In November 2018, six adult female parishioners sued Father Isidore Ndagizimana, who groped them, and the Austin Catholic Diocese and church leadership, who enabled and protected him. They say that the Diocese, Bishop and Archbishop knew they had a predatory priest but their solution was to cover it up and move the priest to a different church, where he victimized more people. In January 2019, the Diocese argued, among other things, that the women's claims were barred by the statute of limitations and that the civil court had no authority to order the church to change its handling of sexual abuse claims. As of publication, the case was pending.³²

DOCTORS

When it comes to sexually abusive physicians, Dr. Larry Nassar, who for years sexually molested his athlete-patients at Michigan State University and USA Gymnastics (see Michigan case description below), may be the most well-known. But he is hardly an anomaly. In 2016, the *Atlanta Journal-Constitution* published an extensive series called "Doctors and Sex Abuse,"³³ examining more than 100,000 medical board documents in 50 states from 1999 through 2015. In the series, which made the list of Pulitzer Prize finalists, the reporters found records for 3,100 doctors who had faced accusations of sexual misconduct including sexual assault. They also found that hospitals and state medical boards kept many of these cases secret and often let the physicians return to practice.

In 2017, *AJC* reporters updated their series, locating another 450 cases which arose during the years 2016 and 2017, where doctors engaged in "sexual misconduct or sex crimes." Again, they found that "in nearly half of those cases...the doctors remain licensed to practice medicine, no matter whether the victims were patients or employees, adults or children."³⁴ This was true even if the physicians were convicted of crimes.³⁵

In the series, *AJC* reported on an interview with Texas health care attorney Rachel V. Rose, who called for more attention "to the damage an abusive doctor can inflict":³⁶

"It has very traumatic effects," [Rose] said. "You're in with a professional or person you are supposed to trust. Whether you are a child or adult, anytime that trust is violated, it's absolutely going to cause, in most people, long-lasting effects."

For Rose, the issue isn't just legal or academic. It's personal. She was in law school, she said, when she woke from gallbladder surgery and realized she had a huge vaginal tear and bleeding. The surgery was a laparoscopic procedure with tiny incisions that had nothing to do with her genitals. The only possible explanation, she said, was a sexual assault. "There was no doubt it had happened," she said.

That evening, Rose consulted with her parents, and an attorney and a physician. She was advised that pursuing a case could hurt the legal career she was just about to begin. She never reported the incident.

With the medical disciplinary and criminal justice systems both failing many of these patients, some have taken the important step of pursuing civil cases against their assailants and third parties. It should be noted that some physician sexual abuse cases can be pursued under state medical malpractice laws, although violent assaults are typically filed as "intentional torts." Negligent third parties, such as culpable hospitals, are often brought into cases as well. But whatever legal theory under which a civil suit is brought, it is often the only legal option for accountability, compensation and some degree of justice for these patients.

The following physician abuse cases are listed alphabetically by state.

ALABAMA

Over 25 former patients are pursuing a civil lawsuit against Decatur rheumatologist Dr. Michael Dick for sexual abuse. According to the complaint, these women "were subjected to years of repeated sexual assaults by Dick in order to receive the medical treatment they needed to live a normal, active life." More specifically, he rubbed their legs, breasts, buttocks and genitals, kissed them "on the forehead, mouth and even on their bare buttocks...[p]ulled off their clothes or pulled them down and exposed breasts, buttocks and genital areas unnecessarily; and rubbed himself against them on different parts of their body."³⁷

CALIFORNIA

Dozens of women recently agreed to a \$215 million federal class action settlement with the University of Southern California (USC) for sexual abuse, harassment and molestation committed by former USC student health center gynecologist Dr. George Tyndall.³⁸ (As of publication, this has not been approved by the court.) According to the complaint, "over his nearly 30 years as an obstetrician-gynecologist at the student health center, Tyndall...committed a range of abuse, from invasive touching of patients' bodies (including nonconsensual vaginal penetration) to offensive racial and sexual statements, to taking photographs of women's genitalia – all under the guise of medical treatment but without clear medical justification." This took place even though USC received many complaints about Tyndall over the years, and did not "adequately investigate or remedy the ongoing abuse." The class settlement is not without controversy, however. Many of Tyndall's survivors called it "premature and paltry, and allows

USC to avoid embarrassing public disclosures about administrators' bungling of decades of misconduct complaints against Tyndall."³⁹

Indeed as of publication, over 500 survivors are also suing in state court. According to one suit, filed by 30 former patients against the doctor and USC in January 2019, Tyndall used his position of trust and authority as the only full-time gynecologist on USC's Student Health Clinic staff to sexually abuse them "on multiple occasions, by engaging in acts that include...groping their breasts; digitally penetrating their vaginas, sometimes without gloves and with unwashed hands; photographing Plaintiffs' genitals and naked bodies" and exposing his own naked body to them. In addition, USC "actively and deliberately concealed TYNDALL's sexual abuse for years, continuing to grant TYNDALL unfettered sexual access to the young students in his care" despite repeatedly receiving reports of his sexually abusive behavior since 1988. The women seek compensatory and punitive damages as well as other relief.⁴⁰

FLORIDA

Former patients alleged in separate lawsuits that they were sexually assaulted by Dr. Gopal Basisht,⁴¹ whose abuse was among many covered in the *Atlanta Journal-Constitution* series, "Doctors and Sex Abuse."⁴² Among them: Astrid Ebner, who in June 2016 filed a lawsuit claiming that the rheumatologist "suddenly and unexpectedly put his hand inside [her] undergarments and touched the area on and around [her] vagina. [The doctor] then penetrated [her] vagina with his finger and put his fingers up to his nose." Two months later, Lauren Kusner also sought compensation in civil court, stating that Basisht massaged her breasts and genitals during an appointment, telling her he loved her as she tried to leave the office while sobbing. In October 2016, Yolanda Moore maintained in a complaint that Basisht had groped her breasts and genitals during office visits. And in March 2017, Gail Pramer filed suit, alleging that Basisht "placed his hands in [her] panties and fondled and pressed very hard on her vaginal area" without medical justification, ignored her pleas to stop and continued to press harder on her vaginal area while "he repeatedly asked [her] if he was hurting her in a tone of voice that made [her] believe that [Basisht] gained prurient enjoyment from the situation."⁴³

ILLINOIS

In January 2019, two women filed lawsuits against NorthShore University HealthSystem and its former gynecologist, Dr. Fabio Ortego, who sexually assaulted them. One of the victims told *Patch*, "'I'm preoccupied in my head with trauma and flashbacks and what he did to me'" and that "she had hoped to be able to delay filing a lawsuit, but an expiring statute of limitations and the health system's decision not to allow it to be extended forced her hand." According to the complaints, Ortego had engaged in sexual conduct against prior patients and NorthShore knew this history yet allowed him to continue seeing patients without a third party present. As a result, NorthShore enabled him to continue to victimize patients who were unaware of his proclivity to commit sexual assault. As of publication, both cases were pending.⁴⁴

In September 2016, Yvonne Vazquez filed suit against Housecall Physicians Group of Rockford, S.C., Eden Home Healthcare and their employee Dr. Charles Dehaan after he reportedly pulled her shirt up, touched her breast and masturbated while smiling at her during an exam. Vazquez sought both non-economic and punitive damages under Illinois's Gender Violence Act, which allows survivors of gender-based violence, including domestic violence and sexual assault, to sue their attacker in civil court for monetary damages or injunctive relief. In March 2018, the court entered a \$50,000 judgment for Vazquez.⁴⁵

MICHIGAN

In May 2018, Michigan State University (MSU) agreed to a \$500 million settlement with 333 women and girls who turned to the civil justice system after the school enabled former longtime university athletics department doctor and USA Gymnastics (USAG) team physician Larry Nassar to sexually assault them and other young female athletes under the guise of medical treatment for over two decades. During the course of litigation, MSU had attempted to escape accountability by arguing in court that governmental immunity barred victims' lawsuits against the university. Under the terms of the agreement – which lead plaintiff Rachael Denhollander told *AP* “reflects the incredible damage which took place on MSU's campus” – the university pledged to create a \$425 million fund for the 333 claimants, with the average award expected to total \$1.2 million. In addition, MSU agreed to set aside \$75 million for future claims, which resulted in at least 160 additional filings for compensation from previously undeclared Nassar victims. After the settlement, numerous victims continued to pursue civil lawsuits against individuals and other entities, such as USA Gymnastics, for allowing Nassar's rampant sexual abuse to occur. As of publication, USAG sought bankruptcy protection to freeze 100 civil suits filed against it by more than 350 Nassar sexual assault survivors. Yet, at the same time, USAG pursued its own lawsuit against multiple insurers, claiming that they breached their responsibility to cover USAG's legal costs in defending against gymnasts' Nassar-related abuse suits.⁴⁶

NEW YORK

In December 2018, 18 former patients filed suit against Columbia University, its associated hospitals and clinics, saying the institutions “actively and deliberately – and inexplicably – concealed [gynecologist] Robert Hadden's sexual abuse for decades, and continued to grant Robert Hadden unfettered access to vulnerable, unsuspecting, pregnant and non-pregnant female patients.” Among the victims: Marissa Hoechstetter, a patient of Dr. Hadden's from 2009 through 2012, who sexually abused her, including during the time surrounding the birth of her twins, giving her inappropriate vaginal exams, including with his tongue, during a postpartum visit. “I really feel that institutions that enable and protect these individuals need to be held accountable to the people they are serving,” Hoechstetter told the *Wall Street Journal*. The women seek compensatory and punitive damages and for Hadden's name to be removed from their children's birth certificates. As of publication, the case was pending.⁴⁷

TEXAS

In November 2017, the Fort Worth Court of Appeals ruled that a non-patient victim could pursue her sexual assault claims against Dr. Ahmad Kayass in civil court. Kayass had tried to dismiss the case using Texas' medical malpractice statute. Details of the abuse, as outlined by the court, are as follows:

On October 28, 2013, T.C. took her three children, twin two-year-old daughters and a five-year-old son, to an urgent care clinic to obtain medical care for her children. T.C. alleged that while she and her children were in the exam room, Kayass, a physician working at the urgent care clinic, sexually assaulted her in front of her children. T.C. – who was not a patient and was not being examined – claimed that Kayass intentionally and knowingly assaulted her without her consent when he groped her right breast and right thigh multiple times, “kissed her on the lips,” “forced [her] to touch and/or rub on his penis,” and “licked her face.”

In its ruling, the majority said that “under no reasonable view of T.C.’s allegations could it be argued that T.C.’s seeking medical treatment for her minor children would require Kayass to grope her.” The appellate court maintained that “T.C.’s children were Kayass’s patients, T.C. did not consent to an examination of herself, the alleged assault of T.C. was not done in the scope of examining her, and the record negated any relationship between Kayass’s alleged acts and his rendition of medical services to T.C.’s children.” The outcome of the case is unknown.⁴⁸

DRIVERS

In March 2018, nine women pursued a class action suit against Uber for sexual assault and battery under state common law, among other causes of action, arguing that the ride-sharing company failed to adequately screen drivers who sexually assaulted them. “Since Uber launched in 2010, thousands of female passengers have endured unlawful conduct by their Uber drivers, including rape, sexual assault, kidnapping, physical violence and gender-motivated harassment,” stated the complaint. “As the number of drivers increase, the number of reported sexual assaults and rapes of female passengers by male Uber drivers has skyrocketed,” which the company should have addressed with stronger safety measures, the women said. In response, Uber fought the class action, arguing that the victims had agreed to arbitrate any disputes when they enrolled for the ride-share service. The company did eventually agree not to “move to arbitrate the riders’ California common law sexual assault and battery claims,” so in December 2018, a judge granted the women’s request to drop the class action.

Other Uber driver sexual assaults victims have recently pursued civil lawsuits against the company and their attackers in state courts. For example, in July 2018, Keather Taylor settled her suit against Uber and former driver Walter Alberto Ponce after Ponce drugged and raped her. As explained in the complaint, the company advertises that it promotes safety and “even charged riders a mandatory ‘Safe Rides Fee.’” However, the company “was not carefully screening its drivers, was not conducting thorough background checks and was knowingly allowing drivers that posed a danger to the general public, such as PONCE, to work for UBER and drive lone intoxicated women late at night.”

Similarly, in March 2018, a female passenger pursued compensatory and punitive damages against Uber, former driver Omar Mahmoud Mousa and others after she was “falsely imprisoned, sexually assaulted, battered and raped” by Mousa. The complaint argued that “[t]his incident was the predictable consequence of UBER’s hiring, retention and lack of supervision of defendant MOUSA, given his well-documented and easily accessible history of violence towards women.”

More recently, a complaint filed by two women in Hamilton County, Tennessee in July 2018 sought compensatory and punitive damages from former Uber driver John Kyle Lane, as well as from Uber, for avoidable injuries caused by the company’s negligence in hiring Lane.

The outcomes of these last two cases are unknown.⁴⁹

ENTERTAINMENT MOGULS

BILL COSBY

Judy Huth has sued Cosby for molesting her at a 1974 Playboy Mansion party when she was 15. She seeks compensatory and punitive damages; trial is scheduled to begin in October 2019. Chloe Goins is also pursuing a civil case against Cosby for drugging and sexually assaulting her at a Playboy Mansion party in 2008. She says that Cosby gave her a laced drink that caused her to blackout in one of the bedrooms. Goins “awakened some time later...from feeling a sharp pain in one of her toes” that was in Cosby’s mouth. She “also noticed she was naked,” “that she felt a wet and sticky substance on her breasts as though a person had been licking them” and “saw [Cosby] stand up and pull up his pants which were previously removed” before he left the bedroom. As of publication, the case was pending.⁵⁰

HARVEY WEINSTEIN

In January 2019, a judge refused to pause a class action suit brought by 10 female accusers against former Hollywood mogul Harvey Weinstein, Disney, Miramax, The Weinstein Company (TWC) and their respective leadership, seeking a jury trial plus compensatory and punitive damages after being sexually assaulted by Weinstein. According to the 264-page complaint, “Plaintiffs, and hundreds of other females like them, found themselves with Weinstein on the casting couch at offices, in hotel rooms, in his homes, or in rooms at industry functions. Under

the guise of meetings ostensibly to help further Plaintiffs' careers, or to hire them, or to make a business deal with them, or to network at industry events, Weinstein isolated Plaintiffs and Class members in an attempt to engage in unwanted sexual conduct that took many forms: flashing, groping, fondling, harassing, battering, false imprisonment, sexual assault, attempted rape, and/or completed rape." In addition, employees and executives of Miramax and Disney, as well as TWC officers, directors and employees, "facilitated, had knowledge of or should have known of Weinstein's predatory behavior." Within a week of that ruling, another court allowed producer Alexandra Canosa to proceed with New York and California tort claims against Weinstein for rape and abuse over seven years. As of publication, both cases were pending.⁵¹

MASSAGE THERAPISTS

Multiple women seek to hold the national chain Massage Envy civilly accountable for sexual assaults committed by employees at its franchise locations. For example, in August 2018, several women sued Massage Envy in California after being sexually assaulted by male massage therapists at franchises in the Bay Area, Sacramento and Southern California. Among the allegations reported by *KTVU*: "one male massage therapist, who is now charged with 13 counts of sexual assault in San Mateo County, forced a female client to touch his penis and groped her before raping her in the massage room. The suit says that when the woman reported the allegations to Massage Envy management in Burlingame, managers refused to fire the massage therapist in question because 'their stories did not match up.' The suit claims the massage therapist, who is now 29, had been accused of inappropriate sexual behavior before the incident and allowed to continue to work." Victims are seeking compensatory and punitive damages.

That same month, 11 female customers sued after being touched in their private areas without consent and suffering other sexual abuses at nine affiliated Florida franchises. "Massage Envy not only failed to provide basic safety to clients in a most vulnerable setting, but it systemically and intentionally conspired and concealed the rampant problem of massage therapists at Massage Envy franchise locations sexually assaulting customers throughout the country," the women said. "Massage Envy's policy of telling staff to 'not go to police' was singularly designed to continue its profit and protect the brand at the expense of the safety of unsuspecting customers."⁵²

RESTAURANT EMPLOYEES

Steak 'N Shake employee B.C. sued the company after being sexually assaulted by her supervisor during an October 2011 overnight shift at the company's Frisco, TX restaurant. He "allegedly pushed her against a sink, grabbed her by the back of the head, and pulled her head toward him, trying to kiss her. B.C. repeatedly told her supervisor 'no' and tried to push him away, but she was unable to escape. During the struggle, B.C. alleges, the supervisor began pulling down her pants while putting his hand up

her shirt. At one point, B.C. was briefly able to break loose from her supervisor’s grasp only to then be pushed back against a restroom wall, where she was unable to escape him. The supervisor began to unbuckle his pants, exposing his genitals to B.C. Still holding on to B.C. and preventing her escape, the supervisor allegedly grabbed B.C.’s head, pulling it toward him. The supervisor then lost his balance and fell to the ground, allowing B.C. to finally escape and flee the restroom.”

In February 2017, a unanimous Texas Supreme Court overturned a lower court ruling and allowed B.C. to “sue the restaurant chain for assault, which has no liability cap, rather than be required to litigate under the Texas Human Rights Commission Act, which has a \$300,000 cap,” since the essence of her claim wasn’t harassment but assault. As of publication, the case was pending.⁵³

SCHOOL EMPLOYEES AND STUDENTS

Little reliable data exist about the amount of sexual violence in schools but what does exist suggests the problem is vast and “far exceed[s] the priest abuse scandal in the Roman Catholic Church.”⁵⁴ According to a 2004 Department of Education report, “the best data available suggest that nearly 10 percent of American students are targets of unwanted sexual attention by public school employees – ranging from sexual comments to rape – at some point during their school-age years.”⁵⁵ That is millions of students.⁵⁶ Additional research suggests that the problem is also pervasive in private schools.⁵⁷

Yet as rampant as “adult-on-student” sexual assault is, student-on-student sexual violence is even more common. In 2017, “a yearlong investigation by The Associated Press uncovered roughly 17,000 official reports of sex assaults by students over a four-year period, from fall 2011 to spring 2015,” and that number is considered vastly low considering the amount of underreporting and poor record-keeping by schools.⁵⁸ According to *AP*,

Unwanted fondling was the most common form of assault, but about one in five of the students assaulted were raped, sodomized or penetrated with an object, according to *AP*’s analysis of the federal incident-based crime data. About 5 percent of the sexual violence involved 5- and 6-year-olds. But the numbers increased significantly between ages 10 and 11 – about the time many students start their middle-school years – and continued rising up until age 14.

The problem is pervasive on college campuses as well. RAINN (Rape, Abuse & Incest National Network) reports:⁵⁹

- 11.2% of all students experience rape or sexual assault through physical force, violence, or incapacitation (among all graduate and undergraduate students).
- Among graduate and professional students, 8.8% of females and 2.2% of males experience rape or sexual assault through physical force, violence, or incapacitation.
- Among undergraduate students, 23.1% of females and 5.4% of males experience rape or sexual assault through physical force, violence, or incapacitation.

Sexual violence can also happen during college hazing rituals, which still occur even though the practice is banned in 44 states.⁶⁰

The following cases involving sexual assault by teachers, coaches, school staff and other students are listed alphabetically by state.

ALABAMA

A 14-year-old Sparkman Middle School special needs student was anally raped by a 16-year-old eighth grader after the school used the child as bait to catch her serial harasser. Sparkman policy dictated that “students had to be ‘caught in the act’ of sexual harassment to impose discipline,” so school staff sent her off with instructions to tell the boy she’d have sex with him in the boys’ bathroom. The sting operation failed, with teachers arriving too late. The victim’s guardian filed a civil lawsuit, alleging state tort claims and other causes of action. In August 2015, the 11th Circuit Court of Appeals rejected an assistant principal’s claims of state-agent immunity and allowed the case to proceed. The parties reached confidential settlements in 2016.⁶¹

CALIFORNIA

Sexual assaults by school employees. In August 2016, Redlands Unified School District reached a \$6 million settlement with a former student alleging repeated sexual abuse by Citrus Valley HS teacher Laura Whitehurst that began when he was 16 and resulted in the birth of a child. The agreement also included a letter of apology from Whitehurst. According to the victim, Whitehurst sexually abused him on campus, in her home and car and during a school field trip to Disneyland, demanded he keep the relationship secret and required him to attend doctor appointments with her once she became pregnant. The District knew about the abuse yet ignored its legal duty to report it to authorities. Two years later, in August 2018, the District settled three sex abuse suits lodged by eight former students of teachers Kevin Patrick Kirkland, Brian Townsley and Daniel Bachman. According to the victims, the District had a culture of covering up sex abuse for more than a decade, failing to report it to authorities. The cases settled for \$15.7 million.⁶²

That same month, a former student prevailed in civil court against the San Diego Unified School District and its employee – Crawford HS Spanish teacher and volleyball coach Toni Sutton. A jury found them liable for injuries he suffered from repeated, eight months-long sexual abuse by 36-year-old Sutton starting at age 15. As reported by *LEXIS*, the victim “claimed that Sutton groomed him for a sexual relationship, had sex with him numerous times in her classroom with the door locked, and had sex with him at her home and in her car.” He said that the District and some of its employees were on notice or ignored significant red flags about Sutton and the abuse. The jury found the school district and Sutton negligent and handed down a \$2.1 million verdict which included non-economic damages.⁶³

Also in August 2018, the Los Angeles Unified School District (LAUSD) reached two separate settlements after students were sexually assaulted by school employees. In one case, the families of nine girls alleged that LAUSD, Cahuenga Elementary and Vine Street Elementary School had turned a blind eye and enabled after-school program coach Ronnie Lee Roman to sexually abuse their children. In the other case, seven boys, including former football players at Benjamin Franklin High School, became victims of sexual misconduct by Jaime Jimenez, a volunteer football coach. According to the suit, district administrators ignored major red flags. The Roman case settled for \$14 million; the Jimenez case settled for \$8 million.⁶⁴

Two years earlier, LAUSD had reached an \$88 million settlement with 30 children and their families who sued over sexual abuse at De La Torre and Telfair Avenue Elementary Schools, “where complaints about the teachers’ behavior had surfaced long before their arrest,” reported the *Los Angeles Times*. More specifically, there was no record that L.A. Unified had investigated Paul Chapel III in light of past abuse allegations, including the fact that “[t]eachers at his first district school, Andasol Elementary in Northridge, warned that Chapel was placing children in his lap, attempting to take them on unauthorized field trips and closing his classroom door with students inside during lunch and recess.” Moreover, “[i]n March 2011, a parent complained to an administrator that Chapel would kiss boys and girls in class. Several children confirmed the allegations, but even at that point, Chapel remained in the classroom for six more weeks, according to court documents.”

There were similar issues regarding Robert Pimentel. For example, in 2002, a former De La Torre principal “questioned Pimentel about allegations that he slapped young girls’ buttocks and touched their calves. Pimentel confessed to the behavior, but blamed it on medication that increased his sex hormones. He continued teaching. He also continued to teach even after De La Torre’s principal received a search warrant asking for Pimentel’s personnel files relating to an investigation that he abused a minor related to him. More complaints against Pimentel began surfacing in 2009, when a social worker filed a report documenting misconduct. Still, the district failed to open an investigation. Pimentel wouldn’t leave the school until 2012 after a student told her mother he had inappropriately touched her.”⁶⁵

And in May 2018, two other California school districts, Torrance and Corona-Norco, agreed to a \$31 million settlement with 25 current and former students molested by wrestling coach Thomas Joseph Snider and a \$3 million settlement with a special-education student repeatedly molested by teacher’s aide Steven Michael Martinez, respectively. Victims said Torrance District “administrators ignored sexual abuse allegations against the coach for years and enabled him to prey on them in the locker room.” Regarding the Corona-Norco lawsuit, the student said that her elementary school’s negligence allowed her to be sexually assaulted by Martinez dozens of times, including in the girls’ bathroom.⁶⁶

Currently, two additional California school districts face civil lawsuits from former students for turning a blind eye to their sexual abuse by school employees. In one case, filed in December 2018, a 25-year-old woman maintains that Long Beach Unified School District should be held

accountable for three years of sexual abuse by former Lakewood HS English teacher Mary Jahn that began when the victim was 15. According to the complaint, school officials repeatedly allowed the girl to miss classes to spend time alone with Jahn in her classroom, failing to exercise reasonable care and recognize “red flags,” thus enabling opportunities for the teacher to groom the student to be molested. More recently, in February 2019, a current and a former John F. Kennedy HS student sought damages from the Anaheim Union High School District after administrators and staff failed to perform their mandatory duty to contact law enforcement about reports that JFK assistant water polo coach Joshua Christopher Owens was sexually abusing the girls, who were 14 to 16 years old. As reported by the *Orange County Register*, “The lawsuit contends that two years prior to Owens’ arrest, a parent reported Owens’ suspected abuse of his daughter to [a JFK coach],” then “a year later, a former student notified [a teacher] that Owens was alleged to be abusing pupils,” who in turn alerted others in the school, including JFK’s then-principal, yet no one reached out to authorities. As of publication, both cases were pending.⁶⁷

Sexual assaults by students. Josh Villegas sued Hesperia Unified School District, Oak Hills High School and others for allowing senior members of the high school football team to sexually assault him repeatedly as part of their new player hazing ritual, a tradition well-known and encouraged by teachers, faculty and coaches. According to the suit, the “abuse ultimately culminated in a savage assault in the locker room bathroom less than a month into his freshman year. While standing at a urinal, two or three older players approached [Villegas] from behind, pinned him against the wall, pulled his pants down and forced their fingers into his anus. The assault was violent, forceful, and rough. [Villegas] was left on the ground of the bathroom, in the fetal position, alone.” The case settled in early 2017 for \$375,000.⁶⁸ In November that same year, the District reached a \$125,000 settlement with another student who, as a freshman, suffered similar sexualized hazing by senior members of Oak Hills’ H.S. football team. As stated in the complaint, the sexual abuse turned especially horrific when “a group of older students turned out the lights to the boys locker room, approached [the child] from behind, in the dark, and violently grabbed him by the shoulders, held him against the floor and forcibly penetrated [his] anus with their fingers.”⁶⁹

In August 2018, a former UCLA student sued Zeta Beta Tau, Sigma Alpha Epsilon, the UCLA Interfraternity Council and ZBT fraternity member Blake Lobato, who sexually assaulted her at 2016 frat party. According to the lawsuit, Lobato pressured her to drink to excess and forcibly penetrated her while she was drunk, ignoring her screams for him to stop. She “reported the incident to the then-president of ZBT, but the fraternity did not investigate the issue,” and a ZBT board member tried to convince her not to report the assault to UCLA. The school found her accusation credible and ultimately expelled Lobato. As of publication, her civil case was pending.⁷⁰

CONNECTICUT

In a May 2017 lawsuit, former student Nicola Briggs sued Kent School, saying that in 1987 and 1988, at age 15, she was sexually abused by Clyde Douglas Fenner, a teacher and employee of the school. She argued that Kent did not take reasonable steps to prevent this, then allowed her to suffer social ostracization and verbal abuse from others at school from 1988 to 1990 after Fenner was discharged. The school failed to end the case on statute of limitations grounds; a trial is scheduled for June 2019.⁷¹

Former students are pursuing separate lawsuits against Hotchkiss, a private boarding school, over repeated sexual abuse while they attended. Victim John Doe's abuse started at age 14, when he was subjected to an "environment of well-known and tolerated sexual assaults, sexually violent hazing, and pedophilia. Upper classmen – including school-appointed senior dormitory proctors – assaulted him by forcibly removing his pants and underwear, hitting his buttocks and genitals, and sticking objects in his anus. A male teacher, [Roy G. 'Uncle Roy' Smith], who was a master in John's dormitory, fondled John's genitals, and later drugged and anally raped him. These horrifying acts and others were inflicted on school property, during the school year, and under the noses of the school's teachers and administrators." In another case, victim Richard Roe says Smith inappropriately touched him on several occasions, ultimately drugging him with "tea" that rendered him incapacitated as Smith sexually assaulted him. Both Doe and Roe seek to hold Hotchkiss accountable and are pursuing compensatory and punitive damages.⁷²

In another case, former boarding students reached confidential settlements in three separate lawsuits that accused the Indian Mountain School of repeatedly failing to act despite knowing English teacher Christopher Simonds had been sexually abusing them and other boys in the 1980s. In all three cases, the school had tried to convince the court that the victims' negligence claims were barred under Connecticut's statute of limitations. Peter Buck Jr., who settled in March 2017, claimed years of abuse starting when he was 14. He said, among other things, that "Simonds forced Buck and other boys to engage in oral sex with each other and with him, that he raped Buck and as many as 12 other young boys, and that he took pornographic photos of the acts to blackmail the kids. Simonds also provided the boys with cigarettes, alcohol, and marijuana as bribes."

Matthew Bernstein and William Brewster Brownville, who both reached confidential agreements with the school in January 2018, made similar claims. For example, "Bernstein's suit said Simonds sexually abused dozens of boys at the school and that he took photographs of them to blackmail them into silence. School staff witnessed boys entering Simonds' apartment after 'lights out' and saw Simonds visiting the dormitories late at night. The school instituted a policy prohibiting faculty from visiting the boys after lights out, specifically to address Simonds' after-hours crimes, the suit claimed, but he flouted the rule and continued his visits."

In Brownville’s case, he said that Simonds “took photographs of the boys while they were naked and involved in sex acts; and he used the photographs to blackmail the boys into gratifying his predatory and perverse sexual desires and into remaining silent about his continuing abuse.” He also said that in “January 1985 in a bedroom in the Doolittle boys’ dormitory, Simonds molested then-13 year old Brewster by forcibly fondling Brewster’s penis and testicles and by forcing Brewster to touch his penis and testicles, threatening, ‘I’ve decided to take a liking to you. You’ll find it infinitely more painful.’ On another occasion in or around 1986, in the kitchen of his house on the Indian Mountain School campus, Simonds forcibly attempted to perform fellatio on Brewster.”

In April 2018, Ramsey Gourd became the latest former student to say “that he was one of the boys molested in the late 1970s by teacher Chris Simonds at ‘photo club’ meetings run by Simonds out of a padlocked basement and in the teacher’s on-campus apartment at the exclusive K-Grade 9 school in Salisbury. Starting when he was 12, Ramsay Gourd and other boys were unwillingly plied by Simonds with cigarettes, alcohol, speed and microdot LSD, molested dozens of times in Simonds’ apartment, and blackmailed with nude photos that Simonds took of a circle of boys that he molested, known as ‘Simonds’ pets,’ the lawsuit states.” As of publication, the case was pending.⁷³

ILLINOIS

Sexual assaults by school employee. Former Evanston Township HS students filed separate lawsuits saying they’d been sexually abused by retired drama teacher Bruce Siewerth nearly 30 years ago and that school officials failed to take steps to protect them. Two complaints, filed in October 2017, stated that Siewerth “groped and/or fondled” their genitals and repeatedly made non-consensual physical and sexual contact with them; a third complaint, filed the following month, made similar allegations. In January 2019, the victims settled their claims against Evanston Township High School, District 202 and the District 202 school board, who agreed to spend \$100,000 to make improvements at the school. As of publication, the men continued to pursue their sexual battery claims against Siewerth.⁷⁴

Sexual assault by students. Beginning in June 2017, players on the Reed-Custer HS football team tried countless times to sexually haze incoming freshman Anthony Brookman during football camp. On July 19, they succeeded. According to a lawsuit filed by his parents in November 2018 against the school district and its employees, as Brookman was waiting in line during practice, upperclassmen tackled him, stripped him of his shorts and pinned him to the ground while one repeatedly attempted to finger his anus as he screamed for help. This type of sexual assault – which the players called “Giving Smoke” – was considered a permissible team tradition. As of publication, the case was pending.⁷⁵

MASSACHUSETTS

Special needs student Matthew A. Thomas, Jr. and his parents sued the Chelmsford public school system and its employees after the sophomore was raped by football teammates at an August 2013 school-sponsored annual football camp. They said that the school's coaches were indifferent to his prior allegations of harassment, allowing an unsupervised environment at the camp where: 1) three students could hold him down, drag him into the shower area and sodomize him with a broomstick over a 20-minute period in the open air cabin while he screamed; and 2) one of the rapists could sexually assault him again that same day – restraining Thomas' chest with his knee, exposing his genitals and then rubbing his testicles on Thomas's chin as students laughed. The town and school district settled the case confidentially in September 2017.⁷⁶

NEW HAMPSHIRE

In January 2018, former St. Paul School (SPS) student Chessy Prout reached a confidential settlement with the boarding school after being sexual assaulted at 15 by a graduating adult male senior “as a direct result of SPS’ fostering, permitting and condoning a tradition of ritualized statutory rape (referred to as the ‘Senior Salute’) among its students and SPS’ utter failure to meet its most basic obligations to protect the children entrusted to its care,” according to the civil complaint. “It will be tragic if the leadership and faculty of St. Paul’s views this settlement as a legal tactic to put its shameful track-record in the past without acknowledging its present issues; my hope is that the settlement motivates everyone involved with the institution to create a culture where student well-being comes first,” Prout said in a statement announcing the agreement.⁷⁷

TEXAS

In the wake of reports exposing Baylor University’s failure to investigate sexual assaults, many women brought civil cases. For example, in June 2016, a former student, who was drugged at Baylor’s “Rugby House,” abducted and then raped, said that the school, its Board of Regents and Baylor’s Title IX Coordinator “knew of the culture of interpersonal violence and hostile environment” at the school and “were aware of at least five prior sexual assaults, against other female Baylor students that had been reported as occurring at the ‘The Rugby House.’” The case settled for undisclosed terms in July 2017. One month later, Baylor, former head football coach Art Briles and ex-athletic director Ian McCaw reached a confidential settlement with another victim – who was raped by a Baylor Bears linebacker in 2012 – “because they knew that [the player] had sexually assaulted at least six women, including other Baylor students” yet failed to act.

And in September 2017, a third victim confidentially settled with Baylor after being brutally gang raped by two Baylor football players. She said that Baylor knew of the “serious risk of sexual harassment and assault that that was occurring within the Baylor football program” but chose to

“prioritize winning football games over the safety of its students.” In addition, school officials “were on notice that its employees within the football program were failing to discipline players and were ignoring reports of sexual and physical violence against female students” and were “specifically on notice that [one of the assailants] was reported for raping a football student trainer prior to the rape of Ms. Doe” yet failed to act.⁷⁸

UTAH

In July 2015, Victoria Hewlett, age 19, was raped multiple times and beaten by Jason Relopez, then a fraternity member of Sigma Chi’s Gamma Kappa Chapter at Utah State University. She sued the national fraternity and its local chapter, claiming Gamma Kappa failed to act despite knowing Relopez had a history of sexually assaulting women. As of publication, the case was pending.⁷⁹

SECURITY GUARDS

Fourteen-year-old Hope Cheston was outside a friend’s birthday party by some picnic tables with her boyfriend when an armed security guard from the apartment complex approached; he told the boyfriend not to move and raped Cheston on a picnic table. Her mother filed a civil lawsuit against Crime Prevention Agency Inc., the security company that employed her attacker, arguing, among other things, that the man should never have been hired since he wasn’t licensed to be an armed guard. A judge ruled the company negligent and a jury was brought in to decide damages. In May 2018, the jury levied a \$1 billion compensatory damages verdict against the company. “My verdict basically shows if you stick with it and do what you need to do to get your justice, there’ll be a brighter end,” Cheston told the *New York Times*.⁸⁰

SPORTS COACHES

The Dr. Larry Nassar scandal (described above) sparked a national discussion about the culture of sexual abuse in some elite sports – a culture that attracts predators and is familiar to many athletes. In 2017, former national gymnastics champion Jennifer Sey wrote in the *New York Times*,⁸¹

As a former elite gymnast and the 1986 national champion, I understand all too well the dynamics that have been brought to light by the recent onslaught of public allegations of sexual misconduct committed against young athletes....

Women’s gymnastics is a sport in which the athletes are very young and barely clothed, and many of the coaches are male.... [N]ow the even more sinister side of the world of gymnastics is getting attention.

It was recently reported that “more than 290 coaches and officials associated with America’s Olympic sports organizations have been publicly accused of sexual misconduct since 1982.” That “amounts to an average of eight adults connected to an Olympic organization accused of sexual misconduct every year – or about one every six weeks – for more than 36 years.” Those numbers include over 175 officials convicted of crimes. They may also include some who have never faced criminal charges but were punished by their sport, such as Olympian and former U.S. Speedskating president Andy Gabel,⁸² or those who have faced no repercussions at all. Clearly, the sexual abuse and assault of athletes is a pervasive problem, only gradually being documented and brought to light.

The following cases, brought by elite or young athletes who survived sexual assaults, are listed by individual sport.

DIVING

In July 2018, former Olympic hopeful Eszter Pryor filed a class action lawsuit against Ohio State University Diving Club and USA Diving for retaining and obstructing investigations of the school’s 28-year-old assistant diving coach William Bohonyi. He began forcing Pryor to have sex with him when she was 16. She says, “USA Diving made a financial calculation to place its lust for ‘medals and money’ over the safety and sanctity of its divers,” all of which caused victims to suffer severe emotional distress, physical injuries and economic losses. As of publication, the civil case was on hold pending the conclusion of a criminal case against Bohonyi.⁸³

GYMNASTICS

Marcia Frederick, the first American woman to win a gold medal in a world gymnastics championship, sued the U.S. Olympic Committee (USOC), USA Gymnastics and former U.S. national team coach Muriel Grossfeld. Frederick was “repeatedly molested, sexually abused and assaulted” by club coach Richard Carlson between 1978 and 1980 “while training and competing as a minor elite gymnast for the United States across the nation.” She says that USAG/USOC failed to protect her from Carlson, to investigate facts of sexual abuse, or to train or properly supervise him. In December 2018, the USOC argued to the court that her claims were time-barred. As of publication, the case was pending.⁸⁴

SOCCER

A 12-year-old West Valley, CA Youth Soccer League player was sexually abused by volunteer coach Emanuele Fabrizio, 37, from May 2011 until March 2012. The abuse included sex, kissing, sexual activity, child pornography of the girl and Fabrizio carving his initial into her belly with a pair of scissors. He was sentenced to 15 years in prison. The victim subsequently pursued a civil lawsuit against the U.S. Youth Soccer Association, its state arm and the West Valley League for failing to conduct a criminal background check on Fabrizio, which would have revealed a 2006 domestic violence conviction, thereby disqualifying him from volunteering with the league (*i.e.*,

working with children). The case led to a precedent-setting decision, with a California appeals court ruling in February 2017 that youth sports associations had a duty to conduct criminal background checks on its coaches, meaning that such organizations could be held liable for a third party's sexual abuse of a minor. As the court explained, "The present case...involved criminal conduct by a member of an organization that provided activities exclusively for children. More importantly, here, defendants were aware that sexual predators were drawn to their organization in order to exploit children and that there had been prior incidents of sexual abuse of children in their programs." In addition, the fact that the national association had created a program specifically to prevent and police sexual abuse indicated "an acknowledgement by U.S. Youth that children playing soccer were at risk for sexual abuse." In August 2018, the parties reached a \$8.2 million settlement before trial, with the U.S. Youth Soccer Association and its state affiliate paying \$6.5 million and \$1.7 million, respectively.⁸⁵

TAEKWONDO

In August 2018, former taekwondo athletes Heidi Gilbert, Amber Means, Mandy Meloon, Gabriela Joslin and Kay Poe filed a Colorado class action suit seeking to hold the United States Taekwondo Association (USAT), the United States Olympic Committee (USOC) and its abuse policing arm the U.S. Center For SafeSport (SafeSport) accountable for serial sexual abuse allegedly committed by coaches Steven Lopez and his brother Jean. The victims say, "Jean's and Steven's long list of rapes were facilitated by several officials at the highest levels of the USOC and USAT," with SafeSport doing "absolutely nothing from 2006 (when Mandy Meloon first reported her sexual abuse) until April 2018 to stop any of the ongoing sexual abuse of the U.S. Olympic taekwondo athletes by Jean or Steven Lopez. Rather than upholding the values and spirit of Team USA, these bad actors manipulated the trust placed in them, abused the power and legitimacy bestowed upon them, shattered the innocence and dreams of numerous young athletes and violated numerous federal and state laws." As reported by *Law360*, some defendants tried to escape accountability, arguing to a magistrate judge that "the allegations were coming too late, as a two-year statute of limitations covers negligence stemming from the sexual abuse claims." In March 2019, the magistrate recommended that USOC face certain state tort claims while others against USOC and USAT were time-barred.⁸⁶ As of publication, the case was pending.⁸⁷

APPENDIX

CAPS ON DAMAGES AND STATUTES OF LIMITATIONS IN SEXUAL ASSAULT CASES

The following is a summary of state laws focusing specifically on three major categories of tort limits that protect violent perpetrators of sexual assault: caps on compensatory damages, most commonly covering non-economic injuries; caps on punitive damages, which limit recovery for particularly horrendous wrongdoing; and statutes of limitations (SOLs), which if overly restrictive will block sexual assault survivors from accessing the civil courts at all.⁸⁸ This summary also breaks out separate laws that might apply in a medical malpractice case, since some patients who have been sexually abused by doctors may be permitted to sue under a state's medical malpractice law.⁸⁹

ALABAMA

CAPS

No compensatory tort cap⁹⁰

Cap on punitive damages

SOL

Two years

ALASKA

CAPS

Cap on non-economic damages*

Cap on punitive damages

SOL

No limit for felony sexual abuse of a minor, sexual assault, trafficking; three years for misdemeanor sexual abuse of a minor, sexual assault, incest; if medical malpractice, two years with certain limited variations for minors

ARIZONA

CAPS

No tort caps⁹¹

SOL

Two years; if child abused, age 20

ARKANSAS

CAPS

No tort caps

SOL

Three years; if child abused, three years from discovery of abuse; if medical malpractice case, two years with limited variations for minors

CALIFORNIA

CAPS

No general tort cap⁹²

Medical malpractice cap on non-economic damages**

SOL

Ten years or three years from when victim knew or should have known; if child abused, three years from discovery of abuse or 8 years after age of majority; if a medical malpractice case, three years with limited variations for minors

COLORADO

CAPS

Cap on non-economic damages

Medical malpractice cap on all damages

Cap on punitive damages

SOL

Two years; if child abused, six years after majority or removal of a “disability”

CONNECTICUT

CAPS

No tort caps

SOL

Two years, except no limit if defendant has been convicted of sexual assault felony; if child abused, 30 years from date of majority

DELAWARE

CAPS

No tort caps

SOL

Two years; if child abused, no limit

DISTRICT OF COLUMBIA

CAPS

No tort caps

SOL

Three years; if child abused, age 25 or three years from when victim knew or should have known of abuse

FLORIDA

CAPS

No compensatory tort cap

Cap on punitive damages*

SOL

Seven years after age of majority, or four years after person leaves dependency of abuser or discovery of abuse; no limit for child victims of sexual battery; if medical malpractice, two years, with limited variations for minors

GEORGIA

CAPS

No compensatory tort cap

Cap on punitive damages*

SOL

Two years; if child abused, five years after age of majority with certain exceptions if victim is 65 or older

HAWAII

CAPS

Cap on non-economic damages*

SOL

Two years; if child abused, age 20

IDAHO

CAPS

Cap on non-economic damages*

Cap on punitive damages

SOL

Two years; if child abused, five years from age of majority, or discovered or should have discovered abuse

ILLINOIS

CAPS

No tort caps

SOL

Two years; if child abused, 20 years or more including no limit in some cases; if medical malpractice, two to four years with limited variations for minors

INDIANA

CAPS

No general compensatory tort cap⁹³

Medical malpractice cap on all damages

Cap on punitive damages

SOL

Two years; if child abused, seven years or four years after ending dependency on abuser

IOWA

CAPS

No general tort cap

Medical malpractice cap on non-economic damages*

SOL

Two years; if child abused, four years from discovering abuse, or five years from treatment or school enrollment for abuse by counselor, therapist or school employee

KANSAS

CAPS

Cap on non-economic damages

Cap on punitive damages

SOL

Two years; if child abused, age 21 or three years from realization of abuse

KENTUCKY

CAPS

No tort caps

SOL

One year; if child abused, 10 years since last act of perpetrator, date victim knew or should have known, perpetrator's conviction, or age 28

LOUISIANA

CAPS

No general tort cap

Medical malpractice cap on all damages (except future damages)

SOL

One year; if child abused, age 28

MAINE

CAPS

No tort caps

SOL

Two years; if child abused, no limit; if medical malpractice case, three years with limited variations for minors

MARYLAND

CAPS

Cap on non-economic damages

SOL

Three years; if child abused, seven years from age of majority; if medical malpractice, five years with limited variations for minors

MASSACHUSETTS

CAPS

No general tort cap

Medical malpractice cap on non-economic damages (except if jury finds special circumstances, which could apply to sexual assault)

SOL

Three years; if child abused, 35 years or 7 years from discovering injury

MICHIGAN

CAPS

No general tort cap

Medical malpractice cap on non-economic damages

SOL

Two years

MINNESOTA

CAPS

No tort caps

SOL

Six years; if child abused, age 25; if medical malpractice case, four years with limited variations for minors

MISSISSIPPI

CAPS

Cap on non-economic damages; additional cap if medical malpractice

Cap on punitive damages*

SOL

Three years; if child abused, three years from majority age; if medical malpractice case, two years with limited variations for minors

MISSOURI

CAPS

No general tort cap

Medical malpractice cap on non-economic damages

SOL

Two years except 10 years if assault by family member; if child abused, age 31 or three years after discovery; if medical malpractice, two years with limited variations for minors

MONTANA

CAPS

No general compensatory tort cap

Medical malpractice cap on non-economic damages

Cap on punitive damages

SOL

Three years; if medical malpractice case, two years with limited variations for minors

NEBRASKA

CAPS

No general tort cap

Medical malpractice cap on all damages

SOL

One year; if medical malpractice, two years with limited variations for those under 20

NEVADA

CAPS

No general compensatory tort cap

Medical malpractice cap on non-economic damages

Cap on punitive damages

SOL

Two years; if child abused, age 28 or 10 years from discovery of abuse; if medical malpractice, three years with limited variations for minors

NEW HAMPSHIRE

CAPS

No tort caps

SOL

Three years; if child abused, age 30 or three years from abuse discovery; if medical malpractice case, two years with limited variations for minors

NEW JERSEY

CAPS

No compensatory tort cap

Cap on punitive damages

SOL

Two years; if child abused, two years from discovery of abuse

NEW MEXICO

CAPS

No general tort cap

Medical malpractice cap on all damages

SOL

Three years; if child abused, age 24 or three years after discovery (whichever comes first)

NEW YORK

CAPS

No tort caps

SOL

Five years; if child abused, age 55; if medical malpractice, two and a half years with limited variations for minors

NORTH CAROLINA

CAPS

No general compensatory tort cap

Cap on punitive damages

Medical malpractice cap on non-economic damages*

SOL

Three years; if child abused, age 21

NORTH DAKOTA

CAPS

No general compensatory tort cap

Cap on punitive damages

Medical malpractice cap on non-economic damages

SOL

Two years; if child abused, 10 years from abuse or discovery of abuse

OHIO

CAPS

Cap on non-economic damages

Cap on punitive damages

SOL

One year; two years if against mental health professional; if child abused, 12 years after age of majority

OKLAHOMA

CAPS

Cap on non-economic damages

Cap on punitive damages*

SOL

One year; if child abused, two years but tolled until age 18, or five years after perpetrator released from custody/prison; if medical malpractice case, two years with limited variations for minors

OREGON

CAPS

Cap on non-economic damages (declared unconstitutional in 99; reversed in 16)

Medical malpractice cap on punitive damages (abolished against doctors)*

SOL

Two years; if child abused, by age 40 or 5 years from discovery of abuse

PENNSYLVANIA

CAPS

No general compensatory tort cap

Medical malpractice cap on punitive damages

SOL

Two years; if child abused, age 30; if medical malpractice, seven years with limited variations for minors

RHODE ISLAND

CAPS

No tort caps

SOL

Three years; if child abused, seven years from act or discovery of it

SOUTH CAROLINA

CAPS

No general compensatory tort cap

Medical malpractice cap on non-economic damages

Cap on punitive damages*

SOL

Three years after discovery of abuse; if child abused, age 27 or three years after discovery

SOUTH DAKOTA

CAPS

No general tort cap

Medical malpractice cap on non-economic damages

SOL

Two years ; if child abused, three years from act or discovery

TENNESSEE

CAPS

Cap on punitive damages

Cap on non-economic damages*

SOL

One year or two years if criminal charges brought; if child abused, age 21 or three years after abuse discovered; if medical malpractice, one year with minor variations for minors and incapacitation

TEXAS

CAPS

No general compensatory tort cap

Medical malpractice cap on non-economic damages

Cap on punitive damages

SOL

Five years; if child abused, 15 years; if medical malpractice, two years

UTAH

CAPS

No general tort cap

Medical malpractice cap on non-economic damages

SOL

Four years; if child abused, no limit; if medical malpractice, two years

VERMONT

CAPS

No tort caps

SOL

Three years; if child abused, six years from act or discovery

VIRGINIA

CAPS

No general compensatory tort cap

Medical malpractice cap on all damages

Cap on punitive damages

SOL

Two years; if child abused, 20 years

WASHINGTON

CAPS

No tort caps

SOL

Three years; if child abused, three years from act or discovery, beginning at age 18

WEST VIRGINIA

CAPS

No general compensatory tort cap

Medical malpractice cap on non-economic damages

Cap on punitive damages

SOL

Two years; if child abused, four years from age of majority or discovery; if medical malpractice case, two years with minor variations for minors

WISCONSIN

CAPS

Medical malpractice cap on non-economic damages***

Cap on punitive damages

SOL

Three years; if child abused, age 35

WYOMING

CAPS

No caps

SOL

Four years; if child abused, age 26 or three years after discovery

* State provides some type of exception to the cap that may apply in a sexual assault case. These exceptions vary from state to state, and include factors such as whether a defendant's harm was intentional, willful, or constituted a criminal felony; or if the defendant was under the influence of drugs or alcohol.

** Statute may exclude intentional torts.

*** Sexual assault by a doctor considered an intentional tort, not governed by medical malpractice law.

NOTES

¹ Non-economic damages compensate for injuries like permanent disability, disfigurement, blindness, loss of a limb, paralysis, trauma, or physical suffering and pain. For more information, see Center for Justice & Democracy fact sheet, “Understanding Non-Economic Damages,” <https://centerjd.org/content/fact-sheet-understanding-non-economic-damages>

² Her total damages were cut down to \$500,000 as a result of the non-economic damages cap. Ohio R.C. § 2315.18(B)(2), <http://codes.ohio.gov/orc/2315.18>

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⁶ National Sexual Violence Resource Center, “Get Statistics,” <https://www.nsvrc.org/statistics> (viewed March 6, 2019).

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⁹ For more information, see Center for Justice & Democracy fact sheet, “Compensation Caps – The War on Women, Children, Seniors and the Poor,” <https://centerjd.org/content/fact-sheet-compensation-caps-%E2%80%93-war-women-children-seniors-and-poor>

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¹² Some cases, although a much smaller number, are filed in federal court. See, e.g., the class action against Ohio State University by “1,500 to 2,500 male students sexually assaulted, abused, molested and/or harassed by OSU physician and athletic team doctor, Dr. Richard Strauss.” *Snyder-Hill v. Ohio State University*, Case No. 2:18-cv-00736-MHW-EPD (S.D.

Ohio)(first amended complaint, filed November 13, 2018), <https://www.teamlgm.com/wp-content/uploads/osu-first-amended-complaint.pdf>

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⁸⁸ SOLs vary greatly from state to state. Several states have extended their statutes of limitations for cases involving the sexual assault of children. Other states have a different (and often slightly longer) SOL for cases against third parties, such as a negligent landlord or security company. This chart is particularly focused on laws that protect those directly committing assaults.

⁸⁹ For medical malpractice cases, we assume the SOL begins running on the “date of injury.” That assumes a patient is aware of an assault at or close to the time it occurred. We understand that this is not always the case. Many states provide an alternative SOL that begins running on the “date of discovery” of an injury. Therefore, there may be some SOL variations based on the facts of a case.

⁹⁰ “No compensatory tort cap” means that the state does not cap compensatory damages, such as non-economic damages, but may still cap punitive damages in sexual assault cases.

⁹¹ “No tort caps” means that the state caps neither compensatory damages, such as non-economic damages, nor punitive damages in sexual assault cases.

⁹² “No general tort cap” means that the state caps neither compensatory damages, such as non-economic damages, nor punitive damages in sexual assault cases. However, it may still cap damages in medical malpractice cases. It should be noted that states vary as to whether sexual assault by a physician is beyond the scope or definition of “medical malpractice” and therefore should be considered an intentional tort, not medical malpractice.

⁹³ “No general compensatory tort cap” means that the state does not cap compensatory damages, such as non-economic damages, in cases except those involving medical malpractice. And the state also may cap punitive damages in sexual assault cases. It should be noted that states vary as to whether sexual assault by a physician is beyond the scope or definition of “medical malpractice” and therefore should be considered an intentional tort, not medical malpractice.