

The Real Cost of Opening a Window for Sexual Abuse Lawsuits in Pennsylvania
Testimony by Marc Stier Prepared for the
Judiciary Committee
Pennsylvania House of Representatives
Public Hearing on House Bill and Senate Bill 1
March 30, 2020

I. Introduction

Chairman Briggs, Chairman Kauffman and members of the committees.

My name is Marc Stier. I'm the former director of the Pennsylvania Budget and Policy Center and a long-time analyst of public policy.

I have been asked to testify today about the claims made in a paper by the Susquehanna Valley Center for Public Policy entitled *The Economic Impact of a Constitutional Amendment to Implement Pennsylvania House Bill 14 of the 2021-22 Session*.¹ The title of the paper however is misleading. It is not really concerned about the economic impact of a constitutional amendment to open two year window for childhood victims of sexual abuse to bring lawsuit against their abusers even though the statute of limitations on such suits had closed. It is concerned entirely with one issue, the financial liability of Pennsylvania public school districts of allowing lawsuits to be brought against public schools for childhood sexual abuse for which they are responsible.

What I'm going to call the Susquehanna report makes three implausibly high estimates of the number of legal cases that would likely be brought and one utterly incredible estimate. Those estimates lead the authors to conclude that the cost to school districts of opening a window for child sexual abuse cases now blocked by the statute of limitations would range from \$5 billion to \$32.5 billion. These estimates are, in my view, deeply flawed and not to be taken seriously.

Before I discuss the report in detail, I want to do something I don't usually do, and talk about my academic credentials for evaluating this report because in this case you deserve to know the training and experience that makes me qualified to pass judgment on the methodology of this paper.

I received a PhD in political science from Harvard University in 1989. At the time one had to pass two language exams to receive a PhD or pass one language exam and a graduate level course in statistics for social sciences. I chose the latter. I wrote my doctoral dissertation on, among other things, the philosophy of social science. This training prepared me to teach statistics and research methods for social science at both the City College of New York and the University of North Carolina at Charlotte. In my seven and a half years as the director of the Pennsylvania Budget and

¹ Susquehanna Valley Center for Public Policy, *The Economic Impact of a Constitutional Amendment to Implement Pennsylvania House Bill 14 of the 2021-22 Session*, January 10, 2023, subsequently referred to as the "Susquehanna Report." No author has signed the report.

Policy Center, I wrote many papers that, like the Susquehanna Report, reached conclusions about the impact of some policy change in Pennsylvania by extrapolating data drawn from other states.

II. The Right and Wrong Way to do Extrapolation Studies

That training has taught that there is a right and wrong way to do this kind of work. The right way is exemplified in another paper that will be discussed today, CHILDUSA's paper entitled Evidence-based Rebuttal to a Report that Miscalculates the Likely Impact of an SOL Window on Public Schools and Government Funds.²

The gold standard in using the experience of other states or geographies in estimating the impact of a policy change in Pennsylvania is to look at states that have instituted the policy change and see what impact it has had. That is the only way to ensure that one is, as researchers like to say, holding constant the other variables that might affect the outcome one is interested in. If a policy change takes place in one state, and the state otherwise is unchanged, we can attribute the outcome to the policy change, not something else. That is what the CHILD USA study does. And its conclusion seems right to me: that based on experience of other states that have adopted similar policies, opening a two year window for survivors of sexual abuse to bring law suits against their abusers is likely to lead to 300 to 900 lawsuits in Pennsylvania.

Even research of this kind can be misleading if states or other geographies are different enough in relevant ways. The CHILD USA study seeks to minimize this difficulty by using the experience of nearby states, New York and Delaware to generate its estimate of the impact of this policy change in Pennsylvania.

The wrong way to do this research is to ignore the actual impact in other states of the policy change one is interested in and, instead, try to generate estimates on the basis of faulty and misleading comparison between unlike phenomena, in this case by trying to directly estimate the likely number of lawsuits that would be brought if a two-year window or child sexual abuse cases were opened through a series of inappropriate comparison.

III. The Susquehanna Reports presents four implausible estimates of likely child sexual abuse claims by public school students.

The Susquehanna report includes four estimates of the likely number of sexual abuse lawsuits filed in Pennsylvania.

A. The Catholic Church comparison

The Susquehanna Report's first estimate of the number of sexual abuse suits that would be filed against public schools is based on the experience of the child sexual abuse in the Catholic Church in Pennsylvania.

The report notes that the grand jury investigation of the Church reports that there were 1,000 cases of sexual abuse by Catholic Priests in Pennsylvania although it suspects that there were perhaps thousands more. The report then assumes that the rate of sexual abuse in public schools is the same

² AJ Ortiz, CHILD USA's Evidence-based Rebuttal to a Report that Miscalculates the Likely Impact of an SOL Window on Public Schools and Government Funds, CHILD USA, January 18, 2023.

as that in Catholic schools and calculates that there would be an estimated 9,214 public school cases of child sexual abuse which it then rounds, for no good reason, to 10,000 cases.³

There are a number of flaws in the analysis to this point.⁴

First, there is no good reason to assume that the rate of sexual abuse in the Catholic church would be the same as the rate of abuse in public schools. There are at least two reasons to think that the opposite would be true. First, children who attend Catholic schools also attend other event, including church services, sporting events, dramatic productions, and so forth where they would be spending time with priests. These occasions in which young boy and girls meet with priests gives them additional opportunities, not found by most public school teachers to groom and abuse children. Second, anyone who has read case studies of people who were abused by Catholic priests, or the report by Attorney General Josh Shapiro, is aware that Catholic priests were able to use their authority in the Church as a means of both grooming young people for sexual abuse and protecting themselves from exposure by the parents of the young people they abused.⁵ It would be far more unusual for public school teacher to have similar authority over their students and their parents. Third, the demographic differences between Catholic priests and teachers in public schools is strikingly different.⁶ Catholics priests are, of course, all men while the vast majority of teachers in public schools are women. We know that rates of sexual harassment and abuse are radically higher for men and then women. So, for all three reasons, a simple extrapolation of the rate of child sexual abuse by priests to public schools would vastly overestimate the number of case sexual abuse in those schools.⁷

Any time one tries to extrapolate from one situation to another dissimilar one, one needs some justification for doing so, some minimal evidence that suggests that the two situations are relevantly similar. The authors of the Susquehanna report provide no such justification. This alone make this first estimate of the likely number of public school cases of child sexual abuse by educators utterly unreliable.

But that is not all. The Susquehanna report makes the fundamental error of assuming that every case of sexual abuse in the Catholic Church would result in a lawsuit. But there is no reason to think that this is true. That 1500 people sought some kind of compensations from the Catholic Church does not mean that the same number would file a lawsuit. Filing a lawsuit is a much more

³ One of the cardinal rules in doing this kind of work is to make conservative estimates that do not inflate one's results. If rounding were necessary—and it's not—the right path would be to round down not up.

⁴ I will ignore one possible error here. For some reason the study increases the 1000 cases to 1500 before doing the calculation without providing any justification of it. But Perhaps they are referring to the 1500 people who made claims against the seven of eight dioceses of the Catholic Church in Pennsylvania that set up a problem to compensate victims.

⁵ Office of the Attorney General, Commonwealth of Pennsylvania, Report I of the 40th Statewide Investigating Grand Jury, Redacted by order of the PA Supreme Court, July 27, 2018. https://www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury_Cleland-Redactions-8-12-08_Redacted.pdf.

⁶ Representative Chris Rabb made this point during the hearing.

⁷ The study also makes another error that might actually skew its results in in the direction of underestimating public school cases of child sexual abuse, as they assume that all non-public school students go to Catholic schools. Given all the other flaws in this part of the study, there is no point in pursuing this here.

difficult process as it would involve a public trial that would put plaintiffs in the public eye in ways they might hope to avoid. It would no doubt also take far longer than the private process set up by the Catholic Dioceses. And not every case would have sufficient evidence to warrant a lawsuit, or to convince an attorney to take the case. (The Dioceses in Pennsylvania themselves rejected 41 of the first 400 cases brought to it.)

B. The Catholic Church extrapolation on steroids

To this point, the Susquehanna Reports analysis is highly questionable and unreliable. But it is not utterly absurd. The report's second estimate of the number of lawsuits that would be filed if the statute of limitations is lifted under a two-year window relies on the claim, based on two press reports, that "public school teachers sexually abuse children at a scale more than 100 times greater than Catholic priests." And on the basis of this statement, the Susquehanna Report claims that as many as 100,000 public school children have been sexually abused by their teachers and would bring law suits against public schools.

This astonishing claim is not just implausible given what I said above about the different circumstances of public schools and the Catholic Church. It is utterly unsupported by any serious reasoning or evidence. And anyone who took seriously their responsibility to do research properly would know it.

The bizarre claim that sexual abuse is 100 times more rampant among public school teacher than Catholic priests comes from two articles in the popular press that both say the claim is found in a Department of Education Report released by the US Department of Education in 2004 entitled "Educator Sexual Misconduct: A Synthesis of Existing Literature."⁸ However, no such claim can be found in that report. It is possible that it was found in a draft version of the report. And the author of the report, Charol Shakeshaft, a professor at Hofstra University, is quoted in the press as making such a claim. However, I have found no serious data analysis provided by Shakeshaft or anyone else to back up that claim. Moreover, the preface of the Department of Education report, written by Eugene W. Hickok, the Deputy Secretary of Education appointed by President George W. Bush, explicitly expresses his qualms about Shakeshaft's work. He writes, "It is important to note some of the Department's reservations about the findings in the literature review. Specifically, the author focuses in large measure on a broad set of inappropriate behaviors designated as 'sexual misconduct,' rather than 'sexual abuse,' which is the term used in the statute."⁹

If we look at the Shakeshaft's remarks as quoted in the two press reports, we can see that her astonishing claim that public school teachers abuse children at 100 times the rate of Catholic priests is based exactly on her failure to be precise about the nature of the sexual misconduct she is discussing. Her ridiculous claim is based on comparing two reports.

⁸ Jessica Marie Baumgartner, Public School Teachers 100 Time more Likely to Abuse Kids than Catholic Priest, Go2Tutrs, March 2022, <https://go2tutors.com/teachers-more-likely-abuse-kids/> and Tom Hoopes, "Has the Media Ignored Sex Abuse in School?" National Review Online August 24, 2006. Charol Shakeshaft, Educator Sexual Misconduct: A Synthesis of Existing Literature, Policy and Program Studies Service, US Department of Education, Office of the Under Secretary, Doc#2004-09, 2004⁸" <https://www2.ed.gov/rschstat/research/pubs/misconductreview/index.html> ⁸

⁹ Eugene W. Hickok, preface, Educator Sexual Misconduct: A Synthesis of Existing Literature, Policy and Program Studies Service, US Department of Education, Office of the Under Secretary, Doc#2004-09, 2004, p. 1.

The first is a report prepared by a research group of the John Jay College of Criminal Justice of the City College of New York for the National Review Board for the Protection of Children and Young People of the US Conference of Catholic Bishops.¹⁰ This report was drawn from a survey of all dioceses and religious orders in the United States. The report itself says that the survey had two limitations. First, not every diocese responded to the survey and second, there was no audit of the reports to ensure that every diocese recorded every case of sexual abuse. Nevertheless, the paper says that there were 10,667 reports of childhood sexual abuse between 1950 and 2002. And the kinds of abuse that are reported are extremely serious: 27.3% of accused priests were accused of performing oral sex on their victims, while 25.1% of accused priests were alleged to have been involved in acts of penile penetration or attempted penetration.

Shakeshaft publicly compared that report to her reanalysis of the 2001 report released by the American Association of University Women, *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*.¹¹ As the title indicates, the AAUW reports cast a much wider net than the Conference of Catholic Bishops, looking at verbal harassment as well as and physical abuse. And its surveys on “physical contact” between teachers and students, asks student to report on a number of activities including whether anyone “pulled at your clothing in a sexual way; blocked or cornered you in a sexual way; pulled off or down your clothing; forced you to kiss him / her; or forced you to do something sexual other than kissing.”

The kinds of physical contact surveyed in the AAUW report can, to be sure, be traumatic for the individuals who experience them. But they are far from the kinds of abuse discussed in the US Conference of Bishops Report. And thus, Shakeshaft’s quantitative comparison between the two reports to justify the claim that public school teachers commit sexual abuse of minors is not only misleading but is, frankly, fraudulent.

There is a reason that Shakeshaft’s absurd claim has never found its way into an academic journal let alone a Department of Education Report—it cannot stand any serious scrutiny by experts in the field. The willingness of the authors of the Susquehanna Report to rely on a claim found in third hand sources, rather doing what I have done and following the claim back to the supposed evidence for it—which took me no more than four hours to do—implicates them in a continuing fraud.¹²

¹⁰ Data from the John Jay study can be found in part IIIB of United States Conference of Catholic Bishops, The National Review Board for the Protection of Children and Young People, *A Report on the Crisis in the Catholic Church in the United States*, February 27, 2004. <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/a-report-on-the-crisis-in-the-catholic-church-in-the-united-states-by-the-national-review-board.pdf>

¹¹ Anne Aexlord, Dana Markow, Harris Interactive, *Hostile Hallways*, the AAUW survey on sexual harassment in America’s schools. American Association of University Women, 2001. <https://www.casa.org/wp-content/uploads/2014/01/AAUW-Hostile-hallways-report.pdf>

¹² This second estimate also makes the error of assuming that every case of sexual abuse would lead to a lawsuit. There is no reason to assume that every survivor of child sexual in Pennsylvania would bring a lawsuit. Indeed, everything we know about child sexual abuse tells us that if they were still alive, many would not do so because of lingering shame about the incidents, because they do not want publicity, and because any evidence they might have had to support such a law suit is long gone.

C. The Letourneau, Brown, et. al extrapolation

The third method used by the Susquehanna Study to estimate the number of cases that might be brought against Pennsylvania school district if the statute of limitation were to be temporarily lifted, relies on a paper, *The Economic Burden of Child Sexual Abuse in the United States*, written by Elizabeth J. Letourneau and her colleagues.

This is an interesting and useful paper, but it has almost no relevance to the question at hand.

The paper seeks to estimate the economic burden of child sexual abuse, due to the impact of sexual abuse on “health care costs, productivity losses, child welfare costs, violence / crime costs, special education costs, and suicide death costs.” This is an important question but the paper does not, at any point, talk about the costs of settling lawsuits against sexual abusers.

The authors of the Susquehanna Report use the report for one reason and one reason only, because they need an estimate of the total number of new cases of child sexual abuse each year and the report contains such an estimate, 40,387 in 2015, drawn from the Children Bureau survey of Child Maltreatment in 2015 and 2017.¹³ (A more professional analysis would have cited this data directly instead of citing a paper that referred to it.)

The Susquehanna Report than uses Pennsylvania’s share of the US population to estimate that there are 327 new child sexual abuse each year. And then it multiplies 327 by 47 years to account for sexual abuse in earlier years that might become the basis for a lawsuit when the proposed two year window is opened. They conclude that there are likely to be 15,369 law suits filed during that window.

There are multiple flaws in this estimation but the most striking one is obvious. While there may well be 327 new cases of sexual abuse each year in Pennsylvania, there is no reason to think they all are carried out by public school educators. We know, to begin with that private school educators also abuse children as do religious figures, sports coaches and so forth And overviews of the research on the subject suggest that 50% of those who abuse children under six are family members while 23% of those who abuse children 12 to 17 are family members.¹⁴ So, without any evidence about the percentage of sexual abusers nationally who are public school teachers, the Susquehanna Report extrapolation from the Child Bureau survey is simply useless.

And, of course, there are other failings of this way to estimate the likely number of lawsuits brough against public schools on behalf of survivors of sexual abuse.

- Multiplying the number of abused children in 2015 by 47 years does not consider the changing population of the state.
- There is, again, no reason to assume that every survivor of child sexual in the last 47 years in Pennsylvania would bring a lawsuit. Indeed, everything we know about child sexual abuse tells us that they would not do so because of lingering shame about the incidents,

¹³Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau United States Department of Health and Human Services, *Child Maltreatment 2015 and 2017*, available at <http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/child-maltreatment>.

¹⁴YWCA, *Child Sexual Abuse Facts*. <https://www.ywca.org/wp-content/uploads/WWV-CSA-Fact-Sheet-Final.pdf>

because they do not want publicity, and because any evidence they might have had to support such a law suit is long gone.

D. The Ken-Ton extrapolation

The final estimate of the number of lawsuits that would be brought by survivors of sexual abuse focuses on one school district, the Kenmore-Town of Towanda School District, which paid \$17.5 million to 35 former students to settle lawsuits claiming that a former elementary school teacher had molested them.¹⁵

The Susquehanna Report extrapolates from this one school district to every school district in Pennsylvania to conclude that 17,500 law suits against school districts would be filed by survivors of childhood sexual abuse.¹⁶

This approach is an abuse of social science research. There is absolutely no reason to assume or evidence to support the notion that one school district is as likely as all others to have a teacher or former teacher who is a serial sexual abuser of children, especially when there is a divergence in the number of students and teachers in school districts in Pennsylvania with 420 total students in the Forest School District and 186,358 in the Philadelphia School District.¹⁷ Serial sex abusers may be more common than we have known. But they are no more likely to be found at the same rate in every school district than serial killers are likely to be found at the same rate in every county in the state.

Estimating results from one geographic area to another only makes sense if (1) those geographic areas are fairly large so that the natural variation in social phenomenon from one smaller area to another is mitigated by the size of the large geographic area and (2) if there is reason to believe that the larger geographic areas that are compared are roughly similar in the relevant respects.

These conditions are clearly not met by this fourth method of estimating the number of childhood sexual abuse lawsuits that will be filed against Pennsylvania school districts if a window is opened by statute or Constitutional Amendment for lawsuits that are not prohibited by the statute against

IV. Conclusion

The four estimates of the likely number of child sexual abuse claims that would be brought if the statute of limitations were lifted for two years are all deeply flawed.

I agreed to testify today for two reasons. The first is that I strongly believe that justice to the survivors of child sexual abuse requires that we open this two year window for them to sue their

¹⁵ Stephen T. Watson & Dan Herbeck, Ken-Ton to pay \$17.5 million to settle sexual abuse claims against a retired teacher, *The Buffalo News*, June 9, 2022, updated on February 25, 2023. https://buffalonews.com/news/local/ken-ton-to-pay-17-5-million-to-settle-sexual-abuse-claims-against-retired-%20teacher/article_0790d10e-e767-11ec-a6ff-2b70c2def8df.html

¹⁶ Among the other ways this part of the report is silly is that it fails to consider the extreme divergence in population among school districts in Pennsylvania.

¹⁷ PA Department of Education, Public School Enrollment Reports, 2021-2022 <https://www.education.pa.gov/Documents/Data%20and%20Statistics/Enrollment/Public%20School/Enrollment%20Public%20Schools%202021-22.xlsx>.

abusers. And I believe justice requires such a policy even if the costs to public schools were as high as the Susquehanna Report estimates.

And second, it is clear to me and I hope will be clear to you by now that the Susquehanna Report is not only profoundly flawed but relies on a fraudulent claim that the authors of the report should have questioned.

If that conclusion sounds harsh, let me say that it is evident that the Susquehanna Report was written to undermine constitutional and statutory proposals that are meant to bring a modicum of justice to people who as children were abused, often with devastating consequences for the rest of their lives.

Those of us who do policy analysis always have a responsibility to do the best job we can. We have a responsibility to check and re-check our reasoning and evidence before we present our conclusions to the public. We have a responsibility not only to check our sources but to follow claims made by those sources back to the original research on which they are based, to ensure that research can stand up to scrutiny. And that responsibility is even greater when we present conclusions that are meant to stand in the way of public policies that aim to bring justice and some relief to people who have suffered deeply.

In my judgement, the report I've been critiquing today manifestly fails to live up to the responsibility required of all of us who labor in this field.