

# Trauma, Memory, and the Law

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# Background on Trauma

## Acute Trauma



- It is a single event
- Definable beginning, middle, and end
- It happens in childhood or adulthood
- Examples:
  - Car accident
  - Gunshot wound
  - Rape
  - Serious fight

## Chronic Trauma



- Repeated incidents
- Childhood or adulthood
- Examples:
  - War
  - Repeated exposure to violence
  - Homelessness

# Complex Trauma

**WHAT IS  
COMPLEX TRAUMA,  
AND HOW IS IT  
DIFFERENT  
FROM TRAUMA?**



- Repeated abuse or harmful exposure
- Can happen in childhood or adulthood
- Perpetrator is someone in a position of trust
  - Caregivers, teachers, coaches, clergy
- Examples:
  - Repeated sexual abuse
  - Severe, ongoing physical abuse

# Effects of Complex Trauma

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Insecure attachment style

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Emotional dysregulation

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Difficulty forming stable relationships

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Long-term physical health effects

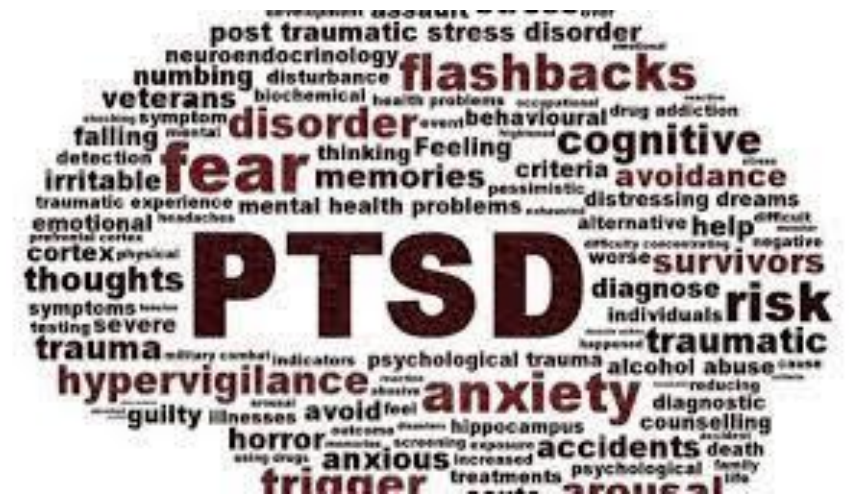
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Poor cognition and memory

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Anxiety and depression

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## CSA and Memory

- The stress of early trauma may affect memory retrieval and encoding.
  - Severe abuse and earlier age at abuse are linked to 'temporary forgetting'
  - CSA victims tend to have less specificity in memories
- Case studies have not found significant differences between the accuracy of 'continuous memories' and 'suppressed memories'
- Accurate memory recall may be affected by age, gender, PTSD symptoms, and non-CSA childhood maltreatment



# Child Sex Abuse Disclosure

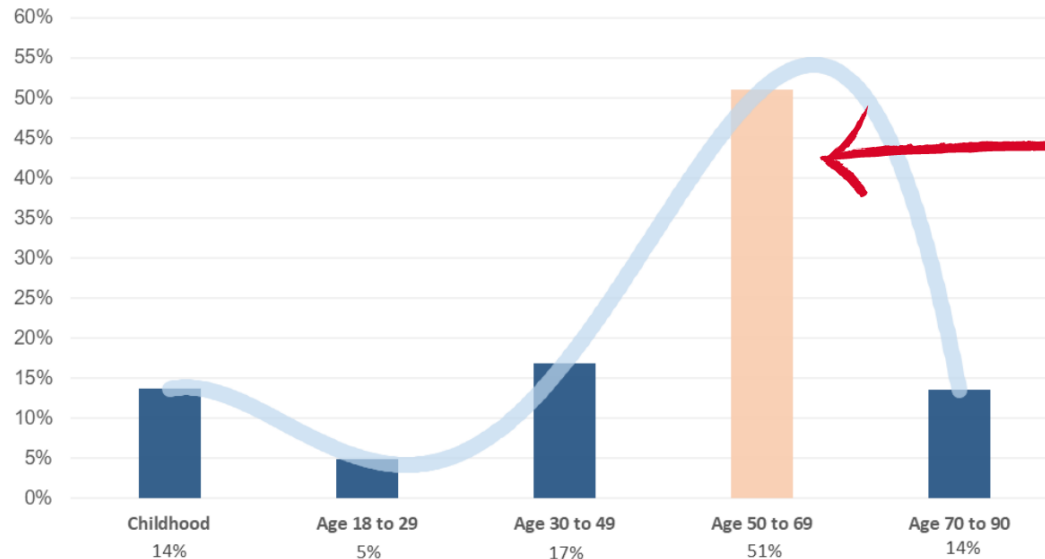
- “Disclosure” = first telling anyone or first telling someone in a position of power
- Delays are common



## DELAYED DISCLOSURE OF CHILD SEXUAL ABUSE

Delayed disclosure is the phenomenon common to survivors of child sex abuse where individuals wait for years, often well into adulthood, before telling anyone they were abused.

Age of First Disclosure of Survivors of Abuse in Boy Scouts of America



More survivors first disclosed between **age 50 and 70** compared to any other age group

**Over half** of survivors who reported first disclosed at **age 50 or older**

**30%** never come forward

Source: CHILD USA's Data on those abused in Boy Scouts of America



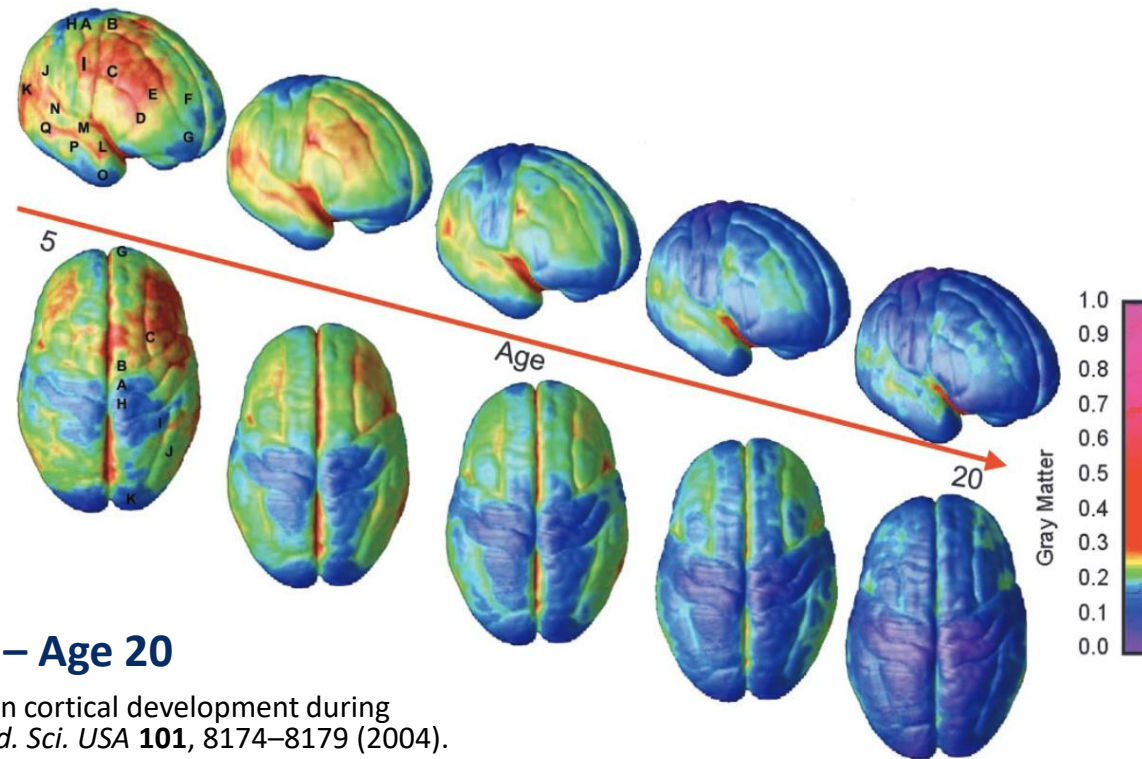
# Reasons Children Delay Disclosing Sexual Abuse



There are many reasons children do not disclose sexual abuse:

- Trauma
- Age
- Threats of bodily harm
- Fear of not being believed
- Shame or guilt
- Lack of opportunity
- Lack of ability to communicate abuse
- Substance abuse

# Brain Development: The Prefrontal Cortex Does Not Fully Develop Until Age 25



## Gray Matter Volume From Age 5 – Age 20

Source: Gogtay, N. et al. Dynamic mapping of human cortical development during childhood through early adulthood. *Proc. Natl Acad. Sci. USA* **101**, 8174–8179 (2004).

# Historically SOLs for CSA are Too Short

- Originally, general personal injury statutes were between 1-2 years from the date of the abuse
- Then they were 1-6 years from the age of majority
- Due to trauma effects and memory issues, victims could not come forward
- Courts and states responded by adopting rules to expand and toll SOL
  - The first state to pass a revival window for civil actions was CA in 2003.



## Emergence of the Discovery Rule

- Legal response to strict date-of-injury statutes
- Emerged in the context of toxic tort and medical malpractice cases
- SOL does not run until P *knows or has reason to know* of injury
- First upheld by U.S. Supreme Court in *Urie v. Thompson* (1949) dealing with silicosis (upper lung disease from inhalation of particles).



# Application of the Discovery Rule

Discovery rules are applied in two different methods:

## Type 1:

Concerns child abuse victims that never forgot the abuse, but either experienced a delay in recognizing their injury or its causal connection to the abuse itself.

## Type 2:

Applicable to victims that have completely suppressed the memories of the child abuse until a triggering point brought the memories back to the child abuse victim

## Type 1 Claims

- To use the doctrine of fraudulent concealment to extend a limitations period, the plaintiff must prove with expert testimony that the plaintiff experienced repressed memory of the abuse.
  - *Doe v. Shults-Lewis Child & Family Services, Inc.* (1999)
- The court mechanically applied the one-year discovery rule, asserting that the plaintiff had the ability to act, giving no regard to the victim's delay in making the connection between the act and the injury.
  - *Doe v. Roman Catholic Church* (1995)

## Type 2 Claims

- The discovery rule does not apply to an individual who has "blocked the incident from [their] conscious memory during the entire time of the statute of limitations." **Overtured due to legislative action.**
  - *Tyson v. Tyson* (1986)
- The court rejected an 18-year-old victim's claim that they repressed their memory of abuse on the grounds that a reasonable person "should have known that her injuries were caused by sexual abuse."
  - *Roe v. Archdiocese of St. Paul and Minneapolis* (1994)

# Two Types of Discovery Rules

- Common Law
  - Often applied retroactively
  - Tolls SOL for claims against all types of defendants (individuals and organizations)
- Statutory Law
  - May be only prospective, but some states apply retroactively, e.g., NJ and CA
  - In a general personal injury statute or CSA statute
  - Commonly helps victims with unexpired claims, but some state laws revive expired claims



## Common Law Discovery Rule - Did Not Work in Repressed Memory Cases

- Early cases dealt with complete repression of CSA.
- *Lemmerman v. Fealk* (1995)
  - CSA claim based on memory failed because there was no "objective verification" of facts.
- *Ramona v. Superior Court* (1997)
  - The court did not find substantial evidence to support daughter's repressed CSA claim.

## Repressed Memory Cases Become Successful

- Increased understanding of repressed memory
  - *Johnson v. Johnson* (1988) was one of the first CSA cases to uphold the discovery rule in the plaintiff's favor.
  - The court emphasized the plaintiff's therapist affidavit and social policy in its opinion.
- Courts are upholding CSA repressed memory claims
  - Usually when the plaintiff has an expert witness to testify.
- Discovery rule for repressed memory is now majority trend

## Expansion of Discovery Rule: Memory Intact but Other Psychological Impediments to Suit

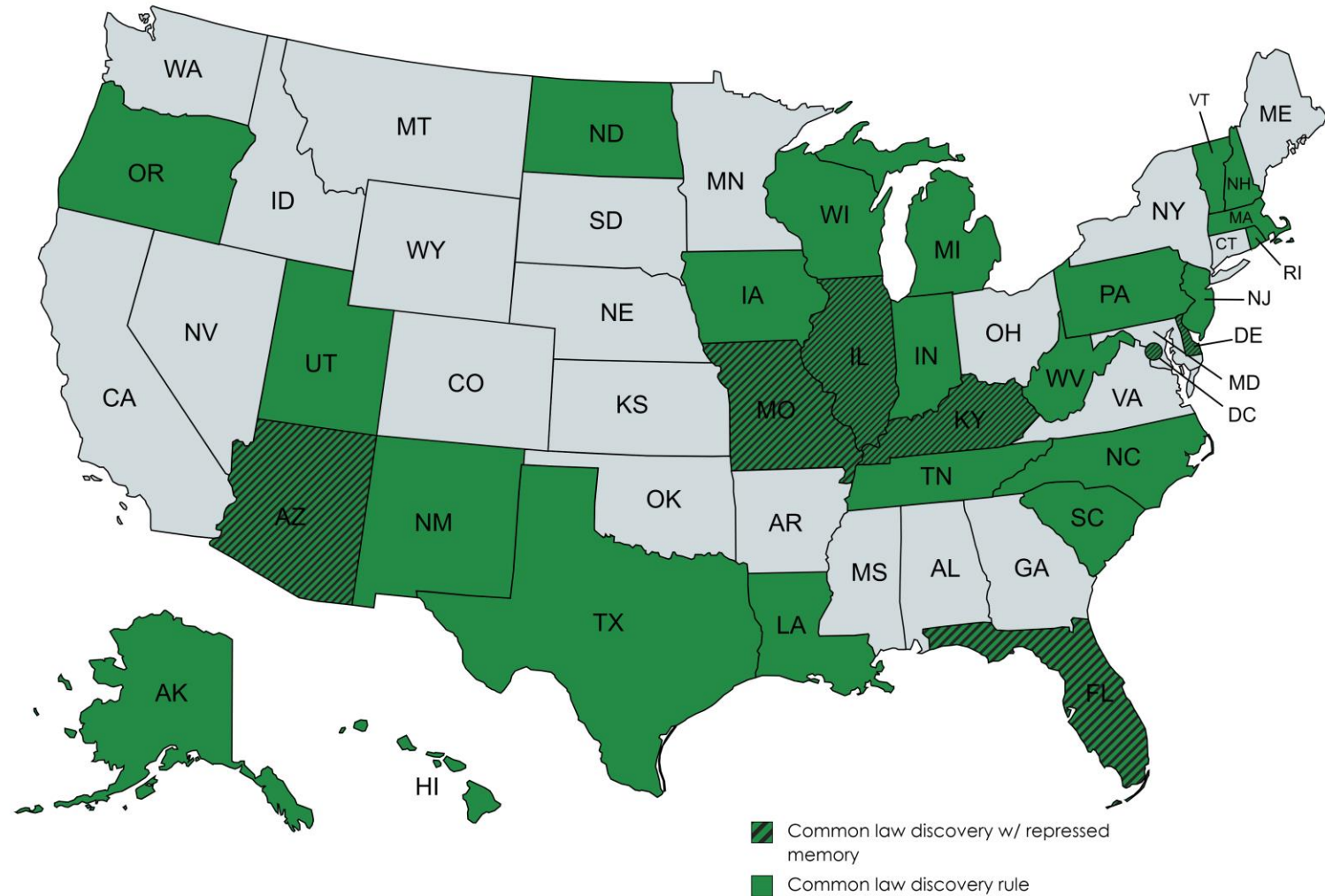
- Aware of CSA but unaware CSA caused injury
  - Solution: Toll SOL until victim makes connection between CSA and injury.
  - E.g. Fla. Stat. § 95.11(7) "...from the time of discovery by the injured party of both the injury and the *causal relationship* between the injury and the abuse..."
- Intact memory but psychologically unable to bring suit
  - Solution: Toll SOL for period that plaintiff has unsound mind or mental disability.
  - However, difficult to prove and a high burden. E.g. *Travis v. Ziter* (1996) (repressed memory is not considered insanity).

# Statutory Discovery Rules and Memory

- **33 states and territories, and the federal government** address delayed claims of CSA by including discovery rules in their CSA statutes
- **7 states and territories** apply common law discovery rules to CSA claims

Source: CHILDUSA.org, *The History of Child Sex Abuse Statutes of Limitation Reform in the United States: 2002 to Today* (forthcoming)

# Common Law Discovery Rules for Repressed Memory



**Discovery rules open courthouse doors to some victims, but revival laws are necessary to ensure access to justice for all victims regardless of when the abuse occurred or why disclosure was delayed**

## There Are Two Sets of Victims



1. Those whose claims have expired



2. Those abused recently who are in statute

## Setting Aside Memory Issues for Victims from the Past



**Revival Laws:** Laws that revive previously expired civil claims, regardless of the reason for the delay.

- **Permanent Revival:** Claims can be brought in perpetuity.
- **Revival Window:** Claims can be brought for a certain number of years post-enactment.
- **Revival up to an age limit:** Claims can be brought until a survivor reaches a specific age.



## Setting Aside Memory Issues for Victims Whose Abuse Is More Recent

- **SOL Extension or Elimination Laws:** Laws that change the SOL to give survivors more time to file claims for abuse-related injuries



- **Extension** laws lengthen the SOL so that it expires later
- **Elimination** laws completely remove the SOL so that there is no limit to file a claim regardless of the reason for the delay

[www.childusa.org](http://www.childusa.org)

Visit our website for the most up-to-date information on the movement for children's rights, including SOL reform, vaccine avoidance, and educational neglect, and the Hamilton Library on child sex abuse.

For more information: [info@childusa.org](mailto:info@childusa.org)



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# Q & A

