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# Adult Survivors of Childhood Sexual Abuse Seeking Compensation From Their Abusers: Are Illinois Courts Fairly Applying the Discovery Rule to All Victims?

## INTRODUCTION

Children have been sexually abused in all cultures throughout history.<sup>1</sup> Although the abuse has not changed, society's attitude towards it has. We no longer live in a time where children are property whose rights can be easily violated.<sup>2</sup> Children are now seen as a valuable part of our community, and there is no doubt that childhood sexual abuse is a heinous act of violence that is looked down upon in our society. It is well known that adults are not to have sexual relationships with children. It is not acceptable for a father to force his own daughter to perform oral sex. It is not acceptable for a teacher or a preacher to fondle, molest or force a child to have sexual intercourse. And yet, children are still being abused.

Victims of this childhood sexual abuse suffer tremendous injuries, some of which can carry on into adulthood.<sup>3</sup> Some of the injuries might not manifest until years after the abuse has ended. Adults often do not realize that the psychological problems that plague them day after day, year after year, are a result of the abuse they suffered through as children.<sup>4</sup> When victims make this causal connection, some want to pursue civil damages so that the defendant can compensate them for their injuries. Unfortunately, most often the victims' claims are barred by the statute of limitations. Some jurisdictions apply the discovery rule to toll these victims' claims, while others do not. Illinois is one state that does not toll the statute of limitations for victims of childhood sexual abuse who have always known of the abuse, but did not make the causal connection with

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1. DIANE H. SCHETKY, M.D. & ARTHUR H. GREEN, M.D., *CHILD SEXUAL ABUSE* 29 (Brunner/Mazel, Inc., 1988).

2. *Id.* at 28.

3. See *infra* notes 13-19 and accompanying text for an examination of the types of injuries that can result from childhood sexual abuse.

4. This comment will focus on these types of cases.

their injuries and the abuse until after the limitations period had passed.<sup>5</sup> By doing so, the courts are denying these victims the compensation they deserve. Illinois should take a more liberal stance in applying the discovery rule to such cases because of the traumatic nature of the misconduct and the unique nature of the victims' injuries.

Part I of this article will discuss the nature of childhood sexual abuse, and the psychological impact it has on its victims. It will also explain the purpose of statutes of limitations, and begin to explore how many claims become time-barred. Furthermore, it will also discuss what impact the discovery rule has on victims' claims. The second part of this article will discuss how Illinois courts apply their statute of limitations and codified discovery rule to civil claims brought by adult victims of childhood sexual abuse. It will explore the courts' interpretation of the statute, as well as focus on the dissenting point of view. The third section of this article will discuss case law from other states that are in line with Illinois court decisions. The fourth section will explore case law from other states that are in direct disagreement with Illinois, and then compare the conflicting holdings. Finally, the last part of this article will stress that Illinois needs to change its views towards certain adult victims of childhood sexual abuse, either by the Illinois Supreme Court reversing its previous holdings or by legislative mandate.

## I. CHILDHOOD SEXUAL ABUSE AND ITS VICTIMS

Childhood sexual abuse is the exploitation of a child or adolescent for another person's sexual gratification.<sup>6</sup> Sexual abuse is committed most often by individuals that the child knows and trusts, such as family members, family friends, caregivers, or others who are in a position of authority.<sup>7</sup> By using their relationship with the child, the perpetrator can easily intimidate or threaten the child into silence after the sexual abuse has occurred.<sup>8</sup>

Despite the growing awareness of the child abuse crisis, it is reported that hundreds of thousands of children are sexually abused each year in the

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5. See *infra* notes 58-72, and 80-88 and accompanying text for an examination of how Illinois applies the discovery rule. Note that Illinois does apply the discovery rule in cases of repressed memories.

6. 1999 NATIONAL VICTIM ASSISTANCE ACADEMY, 6 (Grace Coleman et al. eds., 1999), at [www.ojp.usdoj.gov/ovc/assist/nvaa99/chap10.htm](http://www.ojp.usdoj.gov/ovc/assist/nvaa99/chap10.htm) (last visited Mar. 13, 2003).

7. *Id.*

8. *Id.* at 7.

United States.<sup>9</sup> Unfortunately, many instances of childhood sexual abuse also go unreported,<sup>10</sup> most often because children lack knowledge of whom to report the abuse to, they fear retaliation from the abuser, or fear that they will not be believed.<sup>11</sup> Children may also be prevented from reporting abuse because they believe that the abuse is normal, feel shameful or blame themselves, are threatened by the abuser not to report, or may love the abuser.<sup>12</sup>

There is no doubt that childhood sexual abuse can have severe physical and emotional ramifications for the victim. As a child, the victim can experience sleep disturbances, insomnia, nightmares, psychosomatic disorders, fear and avoidance of males, mistrust,<sup>13</sup> as well as feelings of shame, guilt, low self-esteem, anger, depression, and even suicide.<sup>14</sup> As an adult, a victim can still manifest injuries stemming from the childhood abuse, long after the abuse has ended. Adult victims often experience post traumatic stress disorder (PTSD), which consists of fear, startle reactions, anxiety, repetition, reenactment of or flashback to the trauma, sleep disturbances, depressive symptoms, regression, and maladaptive expressions of anger.<sup>15</sup> Other psychological difficulties victims often experience include suicidal behavior,<sup>16</sup> anxiety disorders, alcohol abuse, and antisocial behavior.<sup>17</sup> Due to the severe trauma of sexual abuse, victims may also repress the memory of the abuse or force themselves into denial as a kind of coping mechanism to deal with the suffering they have endured.<sup>18</sup> Severity of the long-term injuries can vary depending on the age of the victim, frequency and duration of the abuse, degree of physical

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9. *Id.* at 1; Lisa Jones & David Finkelhor, UNITED STATES DEPARTMENT OF JUSTICE: JUVENILE JUSTICE BULLETIN: THE DECLINE IN CHILD SEXUAL ABUSE CASES (January 2001), at [www.ncjrs.org/html/ojjdp/jjbul2001\\_1\\_1/contents.html](http://www.ncjrs.org/html/ojjdp/jjbul2001_1_1/contents.html) (last visited Apr. 23, 2003).

10. SCHETKY, *supra* note 1, at 32.

11. 1999 NATIONAL VICTIMS ASSISTANCE ACADEMY, *supra* note 6, at 17.

12. *Id.*

13. SCHETKY, *supra* note 1, at 41.

14. 1999 NATIONAL VICTIMS ASSISTANCE ACADEMY, *supra* note 6, at 8.

15. SCHETKY, *supra* note 1, at 43.

16. See Beth S. Brodsky et al., *The Relationship of Childhood Abuse to Impulsivity and Suicidal Behavior in Adults With Major Depression*, 158 AM. J. PSYCHIATRY 1871, 1874 (2001).

17. See Harriet L. MacMillan et al., *Childhood Abuse and Lifetime Psychopathology in a Community Sample*, 158 AM. J. PSYCHIATRY 1878, 1878 (2001).

18. RECOVERED MEMORIES OF CHILD SEXUAL ABUSE: PSYCHOLOGICAL, SOCIAL, AND LEGAL PERSPECTIVES ON A CONTEMPORARY MENTAL HEALTH CONTROVERSY 55, 67-69 (Sheila Taub ed., 1999).

trauma, relationship to the perpetrator, preexisting personality factors, quality of support, and therapeutic intervention.<sup>19</sup>

Victims may choose to start therapy to help alleviate the psychological difficulties they are experiencing. During the course of therapy, the victims often realize for the first time that their problems are linked to their abusive history.<sup>20</sup> There are many theories about why victims would not associate their emotional difficulties with the abuse before therapy. One possibility is that the victims unconsciously deny to themselves that the abuse took place, and are therefore unable to make this causal connection.<sup>21</sup> Additionally, the severe feelings of shame that children feel as a response to the abuse may lead the victims to minimize the trauma and continue to underestimate the effects of the abuse throughout their lifetime. These victims often report that the abuse did not affect them in the same way, or as severely, as it would someone else.<sup>22</sup>

This failure to realize the causal relationship between the childhood sexual abuse and adult victims' psychological difficulties may be to the detriment of many victims who later seek to gain compensation for their injuries. Unfortunately, the statute of limitations may bar adult survivors from pursuing their claims. A statute of limitations bars a cause of action for a tort after a lapse of time.<sup>23</sup> Typically, the limitations period begins to run when the tort is complete,<sup>24</sup> such as the date of the injury, or in abuse cases, the date of the abuse.<sup>25</sup> Most often, the statute of limitations is tolled until the injured party attains the age of majority.<sup>26</sup> The main purpose of a statute of limitations is to ensure that an action is filed within a reasonable time to prevent the loss or impairment of evidence and to discourage delay.<sup>27</sup> Therefore, the statute of limitations promotes accuracy, as well as fairness to the defendant so that he is not required to defend himself against a stale claim.<sup>28</sup> It has been argued, however, that a statute of limitations is

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19. SCHETKY, *supra* note 1, at 50.

20. *Id.* at 43.

21. *Id.* at 43-44.

22. TAUB, *supra* note 18, at 70.

23. RESTATEMENT (SECOND) OF TORTS §899 (1977).

24. *Id.* at cmt. c.

25. Rosemarie Ferrante, Note, *The Discovery Rule: Allowing Adult Survivors of Childhood Sexual Abuse the Opportunity for Redress*, 61 BROOK. L. REV. 199, 213 (1995).

26. Gregory G. Gordon, Comment, *Adult Survivors of Childhood Sexual Abuse and the Statute of Limitations: The Need for Consistent Application of the Delayed Discovery Rule*, 20 PEPP. L. REV. 1359, 1371 (1993).

27. *Nolan v. Johns-Manville Asbestos*, 421 N.E.2d 864 (Ill. 1981); Ferrante, *supra* note 25, at 201; Gordon, *supra* note 26, at 1371.

28. See Gordon, *supra* note 26, at 1371.

not fair to victims of childhood sexual abuse.<sup>29</sup> The typical tort victim is not similar to the typical sexual abuse victim. Unlike a victim of a simple battery, whose injury is immediately knowable, many victims of this type of abuse argue that their injuries are not readily discoverable, even by the time they reach the age of majority.<sup>30</sup>

To alleviate the harsh effects of the application of the statute of limitations, many jurisdictions have applied the discovery rule to tort claims.<sup>31</sup> Under Illinois common law, this rule had the effect of postponing the commencement of the limitations period until the injured party knows or should have known of her injury.<sup>32</sup> This is the point in time in which the "injured person becomes possessed of sufficient information concerning [her] injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved."<sup>33</sup> The question of when an injured party should have discovered the existence of her cause of action is one of fact.<sup>34</sup> Even though this common law discovery rule has been codified to apply to childhood sexual abuse cases in Illinois,<sup>35</sup> the Illinois Supreme Court has held that it is not to be applied to victims who did not repress their memories of the abuse.<sup>36</sup> Victims who repress their memories, however, are not the only victims that want to confront their abusers and get compensation.

There are two types of childhood sexual abuse victims that seek redress. The first type consists of victims who were abused as children, but then repressed all memory of the abuse until later in adulthood when the memories were recovered, usually during the course of therapy.<sup>37</sup> Many jurisdictions allow victims of repressed memories to toll the statute of limitations until the point in time in which their memories are recovered, reasoning that repression renders the victim "blamelessly ignorant" and thus, it would be unfair to deny their claim.<sup>38</sup> The second type of victim is one who did not repress the memories, but instead, did not realize that her

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29. *Id.*; Ferrante, *supra* note 25; Jocelyn B. Lamm, Note, *Easing Access to the Courts for Incest Victims: Toward an Equitable Application of the Delayed Discovery Rule*, 100 YALE L.J. 2189 (1991).

30. Gordon, *supra* note 26, at 1372.

31. Knox Coll. v. Celotex Corp., 430 N.E.2d 976, 979 (Ill. 1981).

32. *Id.*

33. *Id.* at 980-81.

34. *Id.* at 981.

35. See 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002).

36. See *infra* notes 58-72 and 80-88 and accompanying text for an examination of how Illinois courts apply the discovery rule to childhood sexual abuse cases.

37. See Lamm, *supra* note 29, at 2201.

38. *Id.* at 2202; see also Gordon, *supra* note 26, at 1386; Ferrante, *supra* note 25, at 219-220.

psychological difficulties in adulthood were caused by the childhood abuse.<sup>39</sup> The source of controversy and lack of uniform application of the discovery rule, most often, is when the courts are confronted with the second type of case.<sup>40</sup>

## II. ILLINOIS LAW, THE DISCOVERY RULE, AND ADULT SURVIVORS OF CHILDHOOD SEXUAL ABUSE

The statute of limitations to bring a personal injury claim based on childhood sexual abuse in Illinois is two years.<sup>41</sup> The Code provides that this limitation period does not begin to run until the person abused attains eighteen years of age.<sup>42</sup> This section also codifies the common law discovery rule, allowing a party to commence an action in childhood sexual abuse "within 2 years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse."<sup>43</sup> Even before the discovery rule was codified, Illinois applied the common law rule to some childhood sexual abuse cases.<sup>44</sup> Illinois courts justified the use of the common law discovery rule in child sexual abuse cases where the victim repressed all memories of the abusive relationship by holding that its application is necessary to alleviate the harsh results of the statute of limitations, and to promote justice, fairness, and equity.<sup>45</sup>

Illinois courts have disagreed on how to apply the codified discovery rule to adult survivors of childhood sexual abuse. As noted earlier, there are two types of cases that can arise. The first is when the victim had repressed all memory of the abuse, and only later in life recalled that she

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39. Lamm, *supra* note 29, at 2201.

40. See generally Lamm, *supra* note 29; Gordon, *supra* note 26; Ferrante, *supra* note 25.

41. 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002).

42. 735 ILL. COMP. STAT. ANN. 5/13-202.2(d) (West 1992 & Supp. 2002).

43. 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002).

44. See, e.g., Johnson v. Johnson, 766 F. Supp. 662 (N.D. Ill. 1991) (applying the common law discovery rule to toll the statute of limitations for incest victim who repressed her memories of childhood abuse); Franke v. Geyer, 568 N.E.2d 931 (Ill. App. Ct. 1991) (applying common law discovery rule to a plaintiff when she was unaware of the causal connection between the earlier abuse and later injuries until after the statute of limitations period ran).

45. M.E.H. v. L.H., 669 N.E.2d 1228, 1234 (Ill. App. Ct. 1996); Phillips v. Johnson, 599 N.E.2d 4, 8 (Ill. App. Ct. 1992).

was abused.<sup>46</sup> The second scenario is when the victim always had knowledge of the abuse, but failed to make the causal connection between the childhood abuse and her psychological injuries in adulthood until after the statute of limitations period had passed.<sup>47</sup> While Illinois has generally agreed that the discovery rule is applied to cases involving repressed memories,<sup>48</sup> the conflict arises in the second type of case when the victim fails to make the causal connection between the abuse and the injury. Several of Illinois' appellate courts have applied the discovery rule to this type of case, relying on the language in the statute which states that the statute of limitations is tolled until the victim "discover[s]...that the act of childhood sexual abuse occurred *and* that the injury was caused by the childhood sexual abuse."<sup>49</sup> In two recent Illinois Supreme Court cases, however, the court ignored the plain meaning of the statute and held that as long as the victim was aware of the abuse, the limitations period begins to run at the time the plaintiff reaches the age of majority.<sup>50</sup>

The reasoning behind the conflicting holdings in cases where the victim has always known of the abuse warrants evaluation. In *D.P. v. M.J.O.*, the Illinois Court of Appeals for the First District held that the discovery rule applies when the victim knew of the abuse and did not repress the memories.<sup>51</sup> In *D.P.*, a father sexually abused his daughters, the plaintiffs, for many years, and although they were always aware of the abuse, they did not file the claim until eleven years after the last abusive act was committed.<sup>52</sup> The defendant argued that the discovery rule was not applicable in this case because the victims did not suffer from repression, but instead had belated discovery of the causal connection between the abuse as children and psychological problems suffered as adults.<sup>53</sup> The court rejected the defendant's argument, and applied the discovery rule to the plaintiff's claim based on both the codified discovery rule and on the holding in *Franke v. Geyer*, an Illinois case decided upon the common law

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46. See Lamm, *supra* note 29, at 2191.

47. *Id.*

48. *Johnson*, 766 F. Supp. at 664; *Philips*, 599 N.E.2d at 7; *Hobert v. Covenant Children's Home*, 723 N.E.2d 384, 386 (Ill. App. Ct. 2000) (applying discovery rule to non-abusers who had a duty to protect the victim); *but see M.E.H.*, 669 N.E.2d 1228, 1234-35 (Ill. App. Ct. 1996) (refusing to apply discovery rule in case of repressed memories).

49. See *D.P. v. M.J.O.*, 640 N.E.2d 1323, 1326 (Ill. App. Ct. 1994) (quoting 735 ILL. COMP. STAT. 5/13-202.2(b) (West 1992)) (emphasis added); see also *Franke v. Geyer*, 568 N.E.2d 931, 932 (Ill. App. Ct. 1991).

50. *Parks v. Kownacki*, 737 N.E.2d 287, 295 (Ill. 2000); *Clay v. Kuhl*, 727 N.E.2d 217, 220-21 (Ill. 2000).

51. 640 N.E.2d 1323 (Ill. App. Ct. 1994).

52. *Id.* at 1324-25.

53. *Id.* at 1325-26.



discovery rule.<sup>54</sup> The court in *D.P.* held that the legislature, in amending Code section 13-202.2 to codify the discovery rule, “explicitly articulated that the discovery rule as applied to childhood sexual abuse applied both to the fact that the abuse occurred as well as to the knowledge that the injury was caused by such abuse.”<sup>55</sup> The court also adopted the reasoning in the *Franke* case, which held that the discovery rule applies to cases where the victim had “belated discovery of the connection between the abuse and the injury as well as to those instances of repressed consciousness of the abuse itself.”<sup>56</sup> The court warned, however, that the plaintiff’s pleadings shall be strictly scrutinized to determine whether the state of the victim’s awareness was such that could reasonably have put her on notice of that nexus between the abuse and the injuries.<sup>57</sup>

When the issue came before the Illinois Supreme Court, however, the court refused to allow victims who always had knowledge of the abuse to toll the statute of limitations. The court in both *Clay v. Kuhl* and *Parks v. Kownacki* refused to apply the discovery rule to victims who did not repress the memories of abuse.<sup>58</sup> In *Clay*, the victim alleged that her priest sexually abused her as a minor.<sup>59</sup> The plaintiff always had memories of the abuse, but did not realize, until she underwent therapy as an adult, the causal relationship between the abuse she suffered and the subsequent psychological problems she experienced.<sup>60</sup> The claim was not filed until 1994, when the plaintiff was approximately thirty years of age.<sup>61</sup> The defendant moved for dismissal based on the statute of limitations, which would have expired in 1984 when the plaintiff turned twenty years of age.<sup>62</sup> The trial court granted the dismissal, characterizing the acts of childhood sexual abuse as “sudden, traumatic events that triggered the running of the limitations period once the victim of the abuse attained majority.”<sup>63</sup> The Supreme Court affirmed the trial court’s determination that the action was untimely because the plaintiff had “sufficient information about her injury

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54. *Id.* at 1326-29; *see generally* *Franke v. Geyer*, 568 N.E.2d 931 (Ill. App. Ct. 1991).

55. *D.P.*, 640 N.E.2d at 1326.

56. *Id.* at 1327.

57. *Id.*

58. *Clay v. Kuhl*, 727 N.E.2d 217 (Ill. 2000); *Parks v. Kownacki*, 737 N.E.2d 287 (Ill. 2000).

59. 727 N.E.2d at 219 (stating specifically that the plaintiff was born in 1964, that the abuse started in 1972 or 1973, and continued for seven years).

60. *Id.*

61. *Id.*

62. *Id.*; 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002) (stating that limitations period expires two years after victim attains age of majority).

63. *Clay*, 727 N.E.2d at 219-20.

and its cause to require her to bring suit long before [she did].”<sup>64</sup> The court stressed that the plaintiff did not repress the memories, and therefore, she had knowledge of the abusive injuries.<sup>65</sup>

Although the plaintiff maintained that she was unable to discover the nature of her injuries, the court in *Clay* reasoned that Illinois law presumes “an intent to harm and a resulting injury” from this type of misconduct.<sup>66</sup> Additionally, the court stated that “[t]here is no requirement that a plaintiff must know the full extent of his or her injuries before suit must be brought under the applicable statute of limitations.”<sup>67</sup> Therefore, the limitations period starts when the injury occurs (the age of majority), rather than when the plaintiff realizes the consequences, or the full extent of the injury.<sup>68</sup> Additionally, in refusing to apply the discovery rule to plaintiff’s claim, the court warned that accepting her argument would “improperly create a subjective standard by which accrual of a cause of action would have to be measured.”<sup>69</sup>

The court in *Clay* also refused to compare the latent manifestation of injuries in adult survivors of childhood sexual abuse to injuries sustained in exposure to asbestos.<sup>70</sup> The plaintiff argued that the discovery rule should apply to her injuries in the same way the rule is applied to persons exposed to asbestos, because her injuries are similar to toxic exposure in that they are slow to develop and unknowable at the time of the occurrence.<sup>71</sup> The court declined to accept the plaintiff’s reasoning because in asbestos cases the risk of harm is not immediately apparent, and those plaintiffs were unable to discover any injury until long after it occurred. In sexual abuse cases, however, the event of the abuse itself creates an immediate awareness of injury, and the plaintiff in *Clay* knew that she suffered some kind of injury at the time of the incident.<sup>72</sup>

Justice Freeman strongly dissented from the *Clay* majority. First, he insisted that the majority erred in assuming that the type of injuries suffered

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64. *Id.* at 221.

65. *Id.* at 221-22.

66. *Id.* at 222 (relying on *Doe v. Montessori Sch. of Lake Forest*, 678 N.E.2d 1082 (Ill. App. Ct. 1997)).

67. *Id.* at 222.

68. *Id.*

69. *Clay v. Kuhl*, 727 N.E.2d 217, 223 (Ill. 2000).

70. *Id.* at 222.

71. *Id.*; see generally *Nolan v. Johns-Manville Asbestos*, 421 N.E.2d 864 (Ill. 1981) (holding that the discovery rule can be applied to a plaintiff who was exposed to asbestos while on the job, and who knew of the exposure, but not that his lung injuries were the result of the exposure).

72. 727 N.E.2d at 223.

by victims of sexual abuse are "sudden and traumatic," in that the nature of the injury is such that the "plaintiff knows or should know that someone may be legally responsible for it."<sup>73</sup> Instead, he categorized the plaintiff's injuries as "disease" type injuries, in which the injuries do not "themselves put the plaintiff on notice that someone may be legally at fault."<sup>74</sup> In other words, the psychological injuries plaintiff suffered from were slow to develop and were not apparent until much later. He argued that in disease cases, the limitations period does not begin when the victim learns of the injury, but instead begins to run when she knows or has reason to know of the injury and also that someone may be responsible for it.<sup>75</sup>

Justice Freeman also claimed that the majority did not give a factual basis for its conclusion that the plaintiff was aware of her injury when the abusive acts took place.<sup>76</sup> The majority ignored the plaintiff's allegations that her injuries developed later in life, and that as of 1994, she was unaware that her psychological difficulties were related to the childhood abuse.<sup>77</sup> He emphasized that remembering the events, which were ultimately found to have caused injury, does not necessarily establish awareness of a link between the event and the injury.<sup>78</sup> Finally, Justice Freeman argued that "at some past moment in time, unknown and inherently unknowable even in retrospect, plaintiff was charged with knowledge of the slow and tragic disintegration of her mind."<sup>79</sup>

The court in *Parks v. Kownacki* followed the reasoning in *Clay*, also holding that the discovery rule is not applicable to adult victims of sexual abuse who knew of the abuse, and thus, should have known that they were injured.<sup>80</sup> Parks claimed that her church reverend sexually abused her as a minor. The abuse continued for many years, and was accompanied by

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73. *Id.* at 225.

74. *Id.*

75. *Id.* (citing *Witherrell v. Weimer*, 396 N.E.2d 268 (Ill. App. Ct. 1979)).

76. *Id.*

77. *Clay v. Kuhl*, 727 N.E.2d 217, 226 (Ill. 2000).

78. *Id.* at 227 (referring also to *Nolan v. Johns-Manville Asbestos*, 421 N.E.2d 864 (Ill. 1981)). Justice Freeman said that the plaintiff's complaint in that case would have been untimely because "he was always aware that he had worked with asbestos and was aware of physical problems as early as 18 years before filing his complaint" 727 N.E.2d at 227; *see also* *Franke v. Geyer*, 568 N.E.2d 931, 933 (Ill. App. Ct. 1991) (comparing childhood sexual abuse injuries to asbestos injuries in that both types of victims do not discover the causal link between the trauma and the injury until the statute of limitations period expires).

79. 727 N.E.2d at 228.

80. *Parks v. Kownacki*, 737 N.E.2d 287, 294 (Ill. 2000).

threats, physical abuse, mental abuse, and a forced abortion.<sup>81</sup> When the plaintiff told an employee of the Diocese about the abuse, he told her to “forgive Kownacki and forget” about what had happened.<sup>82</sup> The church employee even performed a ceremony that the plaintiff believed would help her to accomplish this forgiveness.<sup>83</sup>

Parks admitted that she always had memory of some of the abuse she suffered (although she said she did repress some incidents from memory), but argued that both her fear for the defendant and the ceremony facilitated her failure to understand the cause of her injuries and rendered her “psychiatrically incapable of pursuing her claims . . . prior to the filing of this complaint.”<sup>84</sup> Therefore, the plaintiff alleged that the limitations period did not begin to run on her complaint until she made the causal connection between the abuse and her psychological injuries.<sup>85</sup> The court, however, rejected the plaintiff’s reasoning because she was aware of some injury. For example, the court pointed out that the forced abortion was an obvious injury and the plaintiff should have been aware that it was an injury at the time it occurred.<sup>86</sup> The court relied on *Clay* in holding that when a victim of childhood sexual abuse “was aware of the abuse as it occurred and does not allege that she repressed the memories of that abuse, the limitations period begins to run at the time the plaintiff reaches the age of majority.”<sup>87</sup> Additionally, the court stated that this case has even stronger facts to warrant dismissal than *Clay* because the plaintiff’s awareness of injury is more evident.<sup>88</sup>

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81. *Id.* at 290-292. Plaintiff alleged that most of the abuse occurred while she lived with the defendant, which consisted of sexual, emotional and physical abuse, including a forced abortion that defendant did himself at his rectory.

82. *Id.* at 291. The Diocese never reported the abuse to the police.

83. *Id.* at 291-92. The ceremony took place at the church, where an employee of the Diocese anointed the plaintiff with oil and told her once again to forgive and forget. Plaintiff testified that after the ceremony she felt “as though a huge burden had been removed from her shoulders.”

84. *Id.* (stating that plaintiff maintained that she “did not realize that her sexual relationship with Kownacki was sexual abuse or that she had been injured by that abuse.” Both the ceremony and the failure to discipline Kownacki acted as psychiatric restraint on Parks, and she was unable to “make decisions, or exercise judgment, about any of the sexual and physical abuse that she suffered at the hands of Father Kownacki.”).

85. *Parks v. Kownacki*, 737 N.E.2d 287, 295 (Ill. 2000). Plaintiff testified that she did not link her psychological difficulties with the abuse until a social service agency contacted her years later inquiring if the defendant had abused her. Plaintiff suffered from PTSD, physical injuries from the abortion, low self-esteem, loss of enjoyment of life and earning potential, depression, nightmares, loss of sleep, and poor personal relationships.

86. *Id.* at 295.

87. *Id.* at 294.

88. *Id.* at 295 (referring to abortion as an obvious physical injury).

Interestingly, the dissenting justice in *Clay* concurred with the majority opinion in *Parks*. Justice Freeman agreed with the result in *Parks*, but stated that he disagreed with the majority's reasoning.<sup>89</sup> Freeman agreed that the plaintiff was aware of some injury before 1995, but distinguished *Parks* from the facts in *Clay* because in the latter case, the victim "alleged that the sexual conduct with her abuser was not forcible and she was never physically harmed."<sup>90</sup>

Justice Freeman's opinion is that the discovery rule should be applied to toll the running of the limitations period for victims of childhood sexual abuse who were reasonably unaware of the causal connection between the abuse and the latent psychological injuries.<sup>91</sup> When incidents of injury are obvious, however, like an abortion as in *Parks*, Justice Freeman seems to believe that the discovery rule should not apply because the victim was obviously aware that some type of injury occurred as a result of the abuse.<sup>92</sup> In other words, the discovery rule would apply if the plaintiff was reasonable in her failure to make the causal connection, and this would be determined on a case-by-case basis according to each plaintiff's unique facts. Justice Freeman's reasoning is inconsistent with the Illinois Supreme Court's ruling, which held that injury is presumed when one is abused, and therefore, the discovery rule is not applicable when the victim retains memory of the abuse.<sup>93</sup>

### III. JURISDICTIONS IN AGREEMENT WITH ILLINOIS' APPLICATION OF THE DISCOVERY RULE IN CHILDHOOD SEXUAL ABUSE CASES

There are some jurisdictions that, like Illinois, do not apply the discovery rule to toll the statute of limitations for adult survivors who always had knowledge that they were sexually abused as a child.<sup>94</sup>

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89. *Id.* at 297 (stating that he "continue[s] to adhere to my belief that *Clay* was wrongly decided. Nevertheless, the facts in this case differ so dramatically from the facts in *Clay*, that I concur that dismissal is appropriate here").

90. *Id.*

91. See *supra* text accompanying notes 73-79 and 89-90 for an explanation of Justice Freeman's opinions in *Clay* and *Parks*.

92. See *supra* note 90.

93. See *supra* text accompanying notes 58-72 and 80-88 for an examination of how Illinois courts apply the discovery rule to childhood sexual abuse cases.

94. See generally *Blackowiak v Kemp*, 546 N.W.2d 1 (Minn. 1996); *J.J. v. Luckow*, 578 N.W.2d 17 (Minn. Ct. App. 1998); *D.M.S. v. Barber*, 627 N.W.2d 369 (Minn. Ct. App. 2001); *Doe v. Shults-Lewis Child and Family Servs. Inc.*, 718 N.E.2d 738 (Ind. 1999); *Hildebrand v. Hildebrand*, 736 F.Supp. 1512 (S.D. Ind. 1990); *Hammer v. Hammer*, 418 N.W.2d 23 (Wis. App. Ct. 1987) (applying use of the discovery rule only to those cases

Minnesota has a special discovery statute for cases of sexual abuse. Its statute allows plaintiffs to file suit within six years of the time they “knew or had reason to know that the injury was caused by the sexual abuse.”<sup>95</sup> This statute is similar to the Illinois discovery statute for childhood sexual abuse cases because both appear to toll the statute of limitations until the plaintiff knows of the injury and its cause.<sup>96</sup> Minnesota, like Illinois, does not apply this statute when the victim did not repress the memory, but was always aware of the abuse.<sup>97</sup>

The Supreme Court of Minnesota, in *Blackowiak v. Kemp*, for the first time addressed the issue of applying its codified discovery rule to a case where the victim did not realize the link between his injuries and the childhood abuse.<sup>98</sup> The court reversed the appellate court and held that the discovery rule would not be applied to the plaintiff.<sup>99</sup> The plaintiff was eleven years old when a school counselor abused him. He told his friend about the abuse and informed his mother that the defendant did something “wrong to him.”<sup>100</sup> The plaintiff alleged that it was not until twenty years later that he attributed his feelings of shame and drug and alcohol dependency to being molested as a child, and so the statute of limitations should begin to run at the time that he made this connection.<sup>101</sup> The court disagreed and held that “the nature of criminal sexual conduct is such that an intention to inflict injury can be inferred as a matter of law,” and “as a matter of law, one is injured if one is sexually abused.”<sup>102</sup> The court also held that the discovery rule is not to be subjectively applied. The test is not when the victim acknowledged or appreciated the nature and extent of the harm resulting from the abuse, but is instead an objective test of when the plaintiff knew or should have known that he was sexually abused.<sup>103</sup> This objective test is evaluated by a reasonable person standard, and the court

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in which the crimes were incestuous); *Doe v. Archdiocese of Milwaukee*, 565 N.W.2d 94 (Wis. 1997) (holding that the courts decision in *Hammer* is not applicable to victims of childhood sexual abuse that did not occur in an incestuous relationship).

95. MINN. STAT. ANN. § 541.0732(a) (West 2000).

96. 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002).

97. *Blackowiak*, 546 N.W.2d at 2; *J.J.*, 578 N.W.2d at 19; *D.M.S.*, 627 N.W.2d at 373; *Clay v. Kuhl*, 727 N.E.2d 217, 221 (Ill. 2000); *Parks v. Kownacki*, 737 N.E.2d 287, 294 (Ill. 2000).

98. 546 N.W.2d at 2.

99. *Id.* at 3.

100. *Id.* at 2.

101. *Id.*

102. *Id.* at 3; see also *Parks v. Kownacki*, 737 N.E.2d 287 (Ill. 2000).

103. *Blackowiak v. Kemp*, 546 N.W.2d 1, 3 (Minn. 1996).

held that a reasonable person knows of the injury at the time the abuse occurs.<sup>104</sup>

One justice dissented from the majority *Blackowiak* opinion. Justice Gardebring found fault with the majority's equal treatment of moral knowledge of wrongdoing and legal concepts of injury and causation.<sup>105</sup> She stated that the majority misread the statute of limitations by not acknowledging its plain meaning that knowledge of causation triggers the limitation period, not knowledge that the abuse occurred.<sup>106</sup> Justice Gardebring emphasized that the knowledge of the sexual abuse or personal injury "is not central; it is the link between them, the causation, one of the other, which must be considered in order to determine whether a lawsuit is within the limitations period."<sup>107</sup> She stated that the majority is taking away from the fact finder the issue of when the plaintiff knew or should have known that the emotional injuries were caused by the abuse that occurred years earlier.<sup>108</sup> She would not have dismissed the complaint as untimely because "a reasonable person could find that respondent did not know, nor had reason to know, that the emotional injuries he was experiencing were caused by earlier sexual abuse."<sup>109</sup>

Since the *Blackowiak* opinion, the Minnesota Court of Appeals has held that plaintiffs who were aware of the abuse are denied the use of the discovery rule.<sup>110</sup> It reaffirmed the understanding that injury is presumed when the abuse occurs, and that the victim is "immediately put on notice of the causal connection between the abuse and the injury so that the statute of limitations begins to run once a victim is abused."<sup>111</sup> Incapability of understanding the nature of the sexual abuse and the extent of the injuries

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104. *Id.* at 3 (stating that the plaintiff was aware of the shame and abusive nature of the relationship, and a reasonable person would have known or should have known from the feelings of shame that he was injured).

105. *Id.*

106. *Id.* at 4.

107. *Id.* (disagreeing also with the majority's assumption that shame is the same as knowing the causal connection between the childhood sexual abuse and dysfunction later in life).

108. *Blackowiak*, 546 N.W.2d at 4.

109. *Id.*

110. *J.J. v. Luchow*, 578 N.W.2d 17 (Minn. Ct. App. 1998) (holding that the statute of limitations should not be tolled for plaintiff because feelings of guilt and self-blame are enough to put a victim on inquiry that he was injured); *D.M.S. v. Barber*, 627 N.W.2d 369 (Minn. Ct. App. 2001) (reaffirming that as a matter of law, one is injured when one is abused).

111. *D.M.S.*, 627 N.W.2d at 373; *J.J.*, 578 N.W.2d at 19-20 (disregarding therapist's testimony that the plaintiff suffered from confusion, guilt, and self-blame, which precluded him from realizing that he had been victimized by a trusting authority figure).

does not toll the statute of limitations. These courts did, however, make an exception in instances of repressed memories, which would constitute a legal disability adequate to toll the limitations period.<sup>112</sup>

The Minnesota courts, like Illinois, do not apply the discovery rule to cases where adult victims of childhood sexual abuse were aware of the abuse, but failed to make the causal connection between the abuse and the injuries. Both states presume injury when the abuse occurs, which puts a victim on notice that she was abused.<sup>113</sup> They have also determined that a reasonable person should have known that they were injured at the time of the abuse.<sup>114</sup> This reasoning, however, has been criticized for not adequately acknowledging the psychological nature of the injuries and their latent development.<sup>115</sup>

#### IV. JURISDICTIONS NOT IN AGREEMENT WITH ILLINOIS' APPLICATION OF THE DISCOVERY RULE IN CHILDHOOD SEXUAL ABUSE CASES

Many jurisdictions have adopted the discovery rule for childhood sexual abuse victims who did not discover the causal connection between the abuse and their injuries until later in life.<sup>116</sup> A Wyoming court asked whether the victim of abuse "must be charged with knowledge of her psychic trauma simply because she admittedly was aware of the physical trauma."<sup>117</sup> The same court held that the jury must decide if the results of the abuse were reasonably undiscoverable, and if so, then the statute of limitations would not begin to run until the damage is identified.<sup>118</sup>

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112. *D.M.S.*, 627 N.W.2d at 373; *J.J.*, 578 N.W.2d at 19.

113. *Clay v. Kuhl*, 727 N.E.2d 217, 222 (Ill. 2000); *Blackowiak v. Kemp*, 546 N.W.2d 1, 3 (Minn. 1996).

114. *Clay v. Kuhl*, 727 N.E.2d 217, 223 (Ill. 2000); *Parks v. Kownacki*, 737 N.E.2d 287, 295 (Ill. 2000); *Blackowiak v. Kemp*, 546 N.W.2d 1, 3 (Minn. 1996).

115. See *Clay v. Kuhl*, 727 N.E.2d 217, 226-27 (Ill. 2000) (Freeman, J. dissenting); *Blackowiak v. Kemp*, 546 N.W.2d 1, 4 (Minn. 1996) (Gardenbring, J. dissenting).

116. See generally *McCreary v. Weast*, 971 P.2d 974, 980 (Wyo. 1999); *Osland v. Osland*, 442 N.W.2d 907 (N.D. 1989); *Ross v. Garabedian*, 742 N.E.2d 1046, 1049 (Mass. 2001); *Cosgriffe v. Cosgriffe* 864 P.2d 776 (Mont. 1993); *Tobin v. Damian*, 772 So. 2d 13 (Fla. Dist. Ct. App. 2000); *Dunlea v. Dappen*, 924 P.2d 196 (Haw. 1996); *Frideres v. Schiltz*, 540 N.W.2d 261 (Iowa 1995); *Shirley v. Reif*, 920 P.2d 405 (Kan. 1996); *Hollmann v. Corcoran*, 949 P.2d 386 (Wash. Ct. App. 1997); *Keene v. Edie*, 909 P.2d 1311 (Wash. Ct. App. 1995).

117. *McCreary*, 971 P.2d at 980 (tolling the statute of limitations for a thirty-six year old woman who suffered from PTSD, and who first realized the causal connection eleven years after the abuse ended).

118. *Id.* at 981.



Over a decade ago, the North Dakota Supreme Court confronted the issue of applying the discovery rule to a woman who was abused by her father about seven years before bringing her claim.<sup>119</sup> The court in *Osland* held that the “severe emotional trauma” from the sexual abuse rendered her unable to “fully understand or discover her cause of action during the applicable statutory time period.”<sup>120</sup> Therefore, the court applied the discovery rule to her claim, holding that it would toll the statute of limitations until the time that the plaintiff knew or reasonably should have known that a potential claim existed.<sup>121</sup>

More recently, the Supreme Judicial Court of Massachusetts applied the discovery rule to toll the statute of limitations for a victim of childhood sexual abuse who knew he had been abused, but not that the abuse was the cause of his subsequent psychological injuries. The court in *Ross v. Garabedian* held that under the state’s discovery statute, the plaintiff’s cause of action does not accrue until he knew, or should have known, that he was harmed by the defendant’s conduct.<sup>122</sup> The Massachusetts statute of limitations provision states that a victim of childhood sexual abuse has three years after reaching age eighteen to file a claim, or “within three years of the time the victim discovered or reasonably should have discovered that an emotional or psychological injury or condition was caused by said act.”<sup>123</sup> In *Ross*, the male plaintiff was thirteen years old when a twenty-seven year old male started to sexually abuse him.<sup>124</sup> The plaintiff suffered from PTSD, was unable to maintain a meaningful relationship, and felt guilt and shame over what he admitted was a “wrong” relationship.<sup>125</sup> His therapist testified that the plaintiff utilized unconscious coping mechanisms, common to victims of sexual abuse, that made the plaintiff unable to recognize the causal link between the defendant’s abusive conduct and the plaintiff’s psychological injuries.<sup>126</sup> The court, therefore, held that even though the plaintiff was aware of the abuse and that the relationship was improper, the discovery rule tolls the running of

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119. *Osland*, 442 N.W.2d 907.

120. *Id.* at 908.

121. *Id.* at 909 (holding also that the question of when plaintiff discovered or should have discovered her injury is a question of fact).

122. 742 N.E.2d 1046, 1048 (Mass. 2001).

123. MASS. GEN. LAWS ANN. ch. 260, § 4C (West 1992 & Supp. 1996).

124. 742 N.E.2d at 1047.

125. *Id.* at 1047-48.

126. *Id.* at 1047.

the statute of limitations until the plaintiff knew, or reasonably should have known of the causal connection between his injuries and the abuse.<sup>127</sup>

The Montana legislature also codified the discovery rule to apply to childhood sexual abuse cases. Its statute, similar to Illinois', states that the limitations period, subject to discovery, commences "[three] years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse."<sup>128</sup> In *Cosgriffe v. Cosgriffe*, the Montana Supreme Court held that this discovery provision applies to victims who always had memory of the abuse, but who were unable to make the causal connection between the abuse and her injuries.<sup>129</sup> In *Cosgriffe*, the plaintiff was forty-one years old when she filed suit against her father for abuse that occurred during her teenage years.<sup>130</sup> She alleged that as a result of the abuse she suffered psychological injuries, such as damage to her self-esteem, inability to maintain employment or meaningful relationships, drug and alcohol dependency, and sexual promiscuity, all of which she did not realize were caused by the abuse until she entered therapy a short time before filing the complaint.<sup>131</sup> The court, in allowing the discovery rule to be applied to these facts stated that its reasoning was based on the plain meaning of the statute.<sup>132</sup> It held that the statute expressly allows the plaintiff to bring claims for childhood sexual abuse within three years of discovering that the injuries alleged were caused by the abuser because the plain meaning of the statute "cannot lead to an interpretation that the . . . [plaintiff's] action accrued upon her awareness of the injury and there is no requirement of discovery of the cause of the injury."<sup>133</sup>

These courts' holdings, among others, are in direct conflict with the Illinois Supreme Court's holding not to allow victims with intact memories of the sexual abuse endured in childhood the use of the discovery rule to

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127. *Id.* at 1049-50. (stating that the knowledge that the relationship was wrong and that the plaintiff felt shame is not enough to constitute harm to trigger the statute of limitations because the feelings of shame could stem from other factors, *e.g.* that it was a homosexual relationship and viewed by the church as immoral).

128. MONT. CODE. ANN. § 27-2-216 (1992). Compare with 735 ILL. COMP. STAT. 5/13-202.2 which states that the statute of limitations period commences "within 2 years of the date the person abused discovers or through the use of reasonable diligence should discover that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse."

129. 864 P.2d 776 (Mont. 1993).

130. *Id.* at 777.

131. *Id.*

132. *Id.* at 780.

133. *Id.*

allow them redress as adults.<sup>134</sup> Although they have similar discovery rules, their interpretations of the rule's application differ dramatically.

#### V. ILLINOIS SHOULD CHANGE ITS POLICY TO ALLOW MORE VICTIMS THE OPPORTUNITY FOR REDRESS

The Illinois Supreme Court should eliminate the unfair distinction in applying the discovery rule to some childhood sexual abuse cases but not others. The distinction between victims who repress memories and those who fail to realize that their injuries were caused by the abuse is unfair and is ignored in many jurisdictions.<sup>135</sup> Illinois denies these victims their right to damages by reasoning that injury is presumed at the time of the abusive act and that a reasonable person should have known that they were injured at that time. This reasoning, however, is seriously flawed. Most often the nature of the injuries prevent adult victims from understanding that their psychological difficulties are the result of their abuse as a child.<sup>136</sup> Perpetrators of child sexual abuse are often people that their victims know and admire. Thus, child victims have problems understanding what is happening and utilize psychological coping mechanisms to help them live through their suffering. These coping techniques carry on into adulthood, and further inhibit the victims' understanding that they were emotionally and psychologically injured and prevents them from comprehending the long-term effect of their abuse. Just because the victims are aware of the physical acts does not mean that they are aware of their mental injuries as well. Many victims even deny to themselves that they were injured physically. Victims who cannot understand their injuries, or even that they exist, should not be punished by Illinois courts when trying to get compensation within a reasonable time after they realize that the abuser is responsible for their injuries.

Illinois courts also deny victims relief because it has held that a reasonable person should have known that they were injured at the time of the abuse.<sup>137</sup> The court held that it is reasonable for victims to repress their

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134. See *supra* notes 58-72, and 80-88 and accompanying text for an examination of how Illinois applies the discovery rule to childhood sexual abuse cases.

135. See *supra* notes 116-133 and accompanying text for jurisdictions not in agreement with Illinois.

136. See *supra* notes 13-19 and accompanying text for a description of the various injuries victims suffer from, and notes 20-23 and accompanying text for a discussion of why victims do not understand the causal connection between the abuse and the injuries.

137. See *Clay v. Kuhl*, 727 N.E.2d 217, 222-223 (Ill. 2000); *Parks v. Kownacki*, 737 N.E.2d 287, 295 (Ill. 2000).

memories of the abuse, but it is not reasonable for victims to fail to recognize the link between their injuries and the abuse. This is an unfair distinction. The Illinois Supreme Court in *Clay* was concerned that applying the discovery rule to these victims would create a subjective test of what constitutes a reasonable person, instead of an objective one.<sup>138</sup> The court, however, did not discuss how plaintiffs could meet the reasonable standard requirements. It only made the conclusion that the victims are not reasonable, and does not support its holding with any facts. The court does not give any examples of when a victim could be reasonable in the delay of the discovery of her injuries, except for when she represses the memories of the abuse.

Not knowing of the tortious act itself, however, is not the only instance in which the court can apply the discovery rule to toll the limitations period on a plaintiff's claim. For example, plaintiffs who were exposed to asbestos, even though they knew of the exposure at the time they came into contact with the toxin, can use the discovery rule.<sup>139</sup> This is because they were unaware of the harmful effects of the exposure, until their injuries developed years later. Some children may know that the abusive conduct is wrong while others may not. By the time they reach the age of majority they may know that the acts were illegal. Most victims will try to leave their abusive history in the past, and move on with their lives. Many, however, do not discover until they are well into adulthood that the abuse has injured them psychologically. The court should realize that a reasonable person may not know that the mental and emotional difficulties they suffer from, years after the abuse has ended, were caused by their abusive past.

Additionally, the reasonable person standard should not be applied to victims of childhood sexual abuse. The standard is not appropriate to use for these victims because the victim of such acts cannot be compared to a reasonable person.<sup>140</sup> Again, due to the extraordinarily traumatic nature of the abuse and the depth of psychological injuries, the victim herself, and how she rationalizes the abuse, is far from reasonable. Because of the unique experiences and psychological trauma victims endure, Illinois courts should create a new standard of reasonableness for victims of childhood sexual abuse. They should ask if a victim of childhood sexual abuse should have known that she was injured and the injuries were caused by the abuse.<sup>141</sup> If such a test were used, then the court would adequately

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138. *Clay v. Kuhl*, 727 N.E.2d 217, 223 (Ill. 2000).

139. *See Nolan v. Johns-Manville Asbestos*, 421 N.E.2d 864 (Ill. 1981).

140. *See generally* Lamm, *supra* note 29.

141. *Id.*

take into account the unique psychological disability the plaintiff developed as a result of the abuse. The harsh effects of the statute of limitations would be eliminated, and a victim who never repressed the abuse would be treated fairly.

Even if the Illinois Supreme Court is unwilling to impose a more liberal reasonableness standard to adult victims of childhood sexual abuse, it should at least treat the issue of whether or not the victim was reasonable as a question for the trier of fact. The question of whether or not to apply the discovery rule to toll the statute of limitations is generally a question of fact, unless the facts are sufficient from the pleadings that only one conclusion can be made.<sup>142</sup> Illinois courts, however, are concluding as a matter of law that the victims are unreasonable. At the very least, plaintiffs should be allowed to argue their case to a jury, who may ultimately find that they were reasonable in not recognizing the connection between their current injuries and the earlier abuse.

In addition to the flawed Illinois Supreme Courts' rationale, it is also ignoring the plain meaning of the discovery statute. The statute states that the limitations period is tolled until the victim "discover[s] that the act of childhood sexual abuse occurred and that the injury was caused by the childhood sexual abuse."<sup>143</sup> On the face of the statute there appears to be two prongs that the plaintiff must show to toll the statute of limitations. The first prong is that the victim knows of the injury and, the second, is a causation prong in that the injuries were caused by the abuse. The Illinois Appellate Court's First District construed the second prong of the statute in such a way as to toll the limitations period for a plaintiff who did not discover until later in adulthood that her psychological injuries were caused by the acts of childhood sexual abuse.<sup>144</sup> Other state supreme courts, with strikingly similar statutes, also held that the plain meaning of the statute encompasses claims from victims who were always aware of the abuse, but failed to make the causal connection.<sup>145</sup> By denying these plaintiffs relief, the Illinois Supreme Court is misreading the statute. The statute states that the limitations period is tolled until the plaintiff knew of the causal connection between the abuse and the injuries, and so knowledge of just the abusive act is not enough to trigger the statute of limitations.<sup>146</sup>

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142. *Id.* at 868-69; *Clay*, 727 N.E.2d at 221.

143. 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002).

144. *See* D.P. v. M.J.O., 640 N.E.2d 1323 (Ill. App. Ct. 1994).

145. *McCreary v. Weast*, 971 P.2d 974, 980 (Wyo. 1999); *Cosgriffe v. Cosgriffe*, 864 P.2d 776, 780 (Mont. 1993).

146. 735 ILL. COMP. STAT. ANN. 5/13-202.2(b) (West 1992 & Supp. 2002).

Because the Illinois Supreme Court refuses to apply the discovery rule more liberally, the Illinois legislature should be encouraged to amend the existing statute. It should change the statute to create an opportunity for the victims to gain the compensation they deserve, as a matter of fairness and justice. For example, the Massachusetts legislature codified its childhood sexual abuse discovery rule so that the limitations period would commence once the victim "discovered that an emotional or psychological injury or condition was caused by said act [of abuse]."<sup>147</sup> By creating a distinction between physical injury and psychological injury, the legislature undermines the rationale that injury is presumed upon the act of abuse because the victims' knowledge of the physical injury is not taken into consideration. The Illinois statute should be amended to include language that refers to psychological injuries. By adopting such language, the legislature would recognize that psychological injuries are not as readily discoverable as physical injuries. The language would ultimately eliminate both the importance of plaintiffs' memories of the sexually abusive acts, and the distinction between victims who repress and those who do not.<sup>148</sup>

### CONCLUSION

Childhood sexual abuse is a prevalent problem in our society. Often times because of the nature of the conduct, however, the abuse and the resultant injuries go unseen. Victims suffer tremendous psychological injuries, which in themselves work to prevent the victims from realizing that the psychological, emotional, and social problems they suffer later in life were caused by the abuse. These victims should not be denied compensation, and the perpetrators should not escape liability.

Illinois courts are limiting victims' right to bring civil actions against their abusers. By not applying the discovery rule to victims who were always aware of their injuries but not that their injuries were caused by the abuse, Illinois is disregarding basic principles of fairness, justice and equity. Victims of childhood sexual abuse suffer through tremendous trauma and those who never repress the memories of the abuse should not be denied recovery. The coping mechanisms that many victims employ make them unable to discover the link between the abusive acts and their emotional injuries. In this context, it is unreasonable to assume that the nature of the act itself gives rise to the awareness of an injury.

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147. MASS. GEN. LAWS ANN. ch. 260, § 4C (West 1992 & Supp. 1996).

148. This does not mean that victims who knew that their psychological injuries were caused by the abuse should be allowed to use the discovery rule.

Additionally, the Illinois Supreme Court should not ignore that the plain meaning of the discovery statute, which dictates that the limitations period is tolled until the victim discovers that her injuries were caused by the abusive acts. Illinois needs to take a more liberal stance in its application of the discovery rule to allow more victims of sexual abuse the opportunity to get the compensation they deserve.

CHRISSIE F. GARZA\*

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\* The author wishes to dedicate this article to her family, who has shown her continued support throughout her lifetime. She also wishes to thank the person who was the inspiration for this article, as well as all the people who put time and effort into the publishing process.