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Creating a Civil Remedy in Georgia for Survivors of Out-of-State Childhood Sexual Abuse*

Alexandra H. Bradley

I. INTRODUCTION

Sexual abuse casts long shadows and causes long-lasting effects on its survivors, particularly children.¹ Especially tragic, most abused children are abused by an adult whom that child knows and trusts.² This abuse by anyone, especially by a child's parents or close family friend, often causes lifelong emotional damage. Survivors generally do not recognize the extent of their abuse until many years later.

This late onset or delayed discovery has made it difficult for courts to provide redress. Although technically children could sue their abuser when the abuse occurs, children generally do not know they have a cause of action, nor do they have structures around them directing them to

*My sincerest thanks to my family, especially to my parents, Stephen and Lisa Bradley, without whom I could not function nor flourish. I would also like to thank Professor Daisy H. Floyd for her thoughtful insight and direction throughout the writing process for this Casenote. My gratitude extends further to everyone who took the time to edit my work, to speak with me about this topic, or to extend their encouragement along the way. Finally, to all survivors of childhood sexual abuse, may you know that you are far more than what was done to you, and that while justice cannot truly be provided, people are fighting to provide justifiable redress.

1. Childhood sexual abuse survivors are more likely to experience post-traumatic stress disorder, depressive and suicidal states, or drug or alcohol abuse than those who were not sexually abused as a minor. This list of possible effects is not exhaustive. For further information on the impacts of childhood sexual abuse, see *Childhood Sexual Abuse Statistics, DARKNESS TO LIGHT*, https://www.d2l.org/wp-content/uploads/2017/01/all_statistics_20150619.pdf (last visited Apr. 25, 2022).

2. See Brief of Amicus Curiae for Petitioner at II, Philip Doe v. Saint Catholic Church, et al., 2022 Ga. LEXIS *59, (No. S21T0469) (describing a case of childhood sexual abuse in a Catholic Church and the long-term effects of that abuse, while also explaining the importance of holding entities accountable for covering up childhood sexual abuse).

their legal rights.³ For this reason, in 2015, Georgia's legislature provided survivors with a statutory civil cause of action via the Hidden Predator Act (HPA), Official Code of Georgia Annotated section 9-3-33.1.⁴ The HPA allows survivors to bypass what would otherwise be time-barred claims and, in theory, to sue their abusers for monetary damages during adulthood once the survivors become aware of their abuse.⁵

The HPA provided a brief period that allowed for childhood sexual abuse survivors to sue for previously time-barred civil claims arising out of their abuse.⁶ Under this brief period, the plaintiff in *Harvey v. Merchan*,⁷ Joy Caroline Harvey Merchan (Merchan), sued her parents for twenty-two years of sexual abuse.⁸ With *Harvey*, the Georgia Supreme Court paved the way for childhood sexual assault survivors to sue in Georgia for their abuse that occurred out of the state.⁹

While the *Harvey* decision and implementation of the HPA were important steps towards providing survivors full redress for their abuse

3. This is assuming that the child has had time to properly process their abuse. On average, a survivor is not fully aware of the extent of their abuse until the age of fifty-two. Telephone Interview with Melina D. Lewis, Wilbanks Child Endangerment and Sexual Exploitation Clinic Post-Graduate Fellow (Sept. 17, 2021).

4. Hidden Predator Act, O.C.G.A. § 9-3-33.1 (2019).

5. Although the HPA provides survivors potential monetary remedies or injunctions, survivors' damages may not be properly rectified by these means. Generally, survivors want to hear "I'm sorry," or "what I did to you was wrong," and to have their abuser(s) kept away from other children. Civil courts cannot provide these remedies. Telephone Interview with Jean Goetz Mangan, Legal Writing Instructor at the University of Georgia School of Law, First to Try a Case Under the Hidden Predator Act to Verdict (Oct. 6, 2021). The Act does not always work as well in practice. *See infra* Section V.

6. 311 Ga. 811, 860 S.E.2d 561 (2021).

7. The period lasted for two years. This period allowed

[P]laintiffs of any age who were time barred from filing a civil action for injuries resulting from childhood sexual abuse due to the expiration of the statute of limitations in effect on June 30, 2015 . . . to file such actions against the individual alleged to have committed such abuse before July 1, 2017, thereby reviving those civil actions which had lapsed or technically expired under the law in effect on June 30, 2015.

O.C.G.A. § 9-3-33.1(d)(1) (2017).

8. *Id.* at 811, 860 S.E.2d at 565. The Wilbanks CEASE Clinic at the University of Georgia School of Law brought this case on behalf of Merchan. The Wilbanks CEASE Clinic represents childhood sexual abuse or exploitation survivors in civil lawsuits, as well as in juvenile dependency proceedings. *See* University of Georgia School of Law Wilbanks Child Endangerment and Sexual Exploitation Clinic, *Supreme Court of Georgia Sides with CEASE on Hidden Predator Act Case*, CEASE (Jun. 21, 2021), <https://cease.law.uga.edu/supreme-court-georgia-sides-cease-hidden-predator-act-case>.

9. The out of state action must still have jurisdiction in the Georgia court. *Harvey*, 311 Ga. at 811, 860 S.E.2d at 565.

and deterring future abuse, the legislature still has steps it needs to take to achieve these goals adequately.¹⁰

II. FACTUAL BACKGROUND

Merchan allegedly endured sexual abuse by her parents throughout her childhood, from her earliest memories, to when she moved out of her parents' home.¹¹ This abuse occurred in Quebec, Canada and Savannah, Georgia.¹² When Merchan and her parents (Harveys) lived in Quebec, she was "sexually abused . . . frequently and repeatedly."¹³ Merchan and her parents left Quebec and moved to Savannah when Merchan was fifteen.¹⁴ After moving to Savannah, Merchan stated the "physical abuse 'died down' and 'seemed to not be as prevalent,'" but her father would continue to watch her shower and comment on her body.¹⁵ After Merchan moved out, she experienced the trauma that often follows abuse.¹⁶ She is still dealing with the damages to her mental and emotional health today.¹⁷

Merchan moved out of her parents' home at twenty-two, but did not sue her parents until she turned forty.¹⁸ She was able to sue under the revival window in the HPA.¹⁹ She sued for negligence, intentional infliction of emotional distress, sexual battery, and assault.²⁰ The Harveys responded by filing a motion to dismiss and a motion for summary judgment.²¹ In their motions, the Harveys argued that the HPA did not create a cause of action for acts of abuse that occurred after the

10. *Id.*

11. At this stage of the complaint, the facts of the case have not been tried. Under the Harveys' motion to dismiss, the court must take the alleged facts in the complaint as true. Complaints must be alleged with facts that are plausible on their face, which allows courts to take them as true in pre-trial motions. The word choice of "allegedly" here is not to insinuate that the claims of sexual abuse are any more or less credible, but to accurately describe the stage of the case. The facts of this case may be tried in the future for their truth. *Id.* See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (deciding a complaint must be written in such as a way that it can be taken as "plausible on its face").

12. *Harvey*, 311 Ga. at 811, 860 S.E.2d at 565.

13. *Id.* at 812, 860 S.E.2d at 566.

14. *Id.*

15. *Id.*

16. Oral Argument at 22:18, *Harvey v. Merchan*, 311 Ga. 811, 860 S.E.2d 561, 565 (2021) (No. S21A0143), <https://www.gasupreme.us/oral-arguments-february-04-2021>.

17. *Harvey*, 311 Ga. at 812, 860 S.E.2d at 566.

18. *Id.* at 812 n.2, 860 S.E.2d at 566. Merchan is currently working on her fourth amended complaint. *Id.*

19. O.C.G.A. § 9-3-33.1; see also *Harvey*, 311 Ga. at 811, 860 S.E.2d at 565.

20. Merchan brought this suit against the Harveys in June of 2017. *Harvey*, 311 Ga. at 812, 860 S.E.2d at 566.

21. The Harveys argued in the alternative in their two motions. *Id.*

age of eighteen or for acts that occurred outside Georgia.²² The motions also argued that the HPA violated the Due Process Clause, the Equal Protection Clause, and Georgia's constitutional prohibition against retroactive laws. The Carroll Superior Court granted the motion to dismiss the negligence claim, but otherwise denied the motions. The trial court concluded that if the *mens rea* and *actus reus* elements of the action under the HPA are met, a tort from another jurisdiction can be brought in Georgia.²³

Ultimately, these questions were before the Georgia Supreme Court.²⁴ The first was whether Georgia or Canadian law applied to Merchan's claims.²⁵ The second was whether O.C.G.A. § 9-3-33.1 applies to the incidents that occurred in Quebec.²⁶ The third was whether Quebec's or Georgia's statute of limitations applies.²⁷ The fourth was whether the continuing tort theory applies to Merchan's claims.²⁸ The final was if O.C.G.A. § 9-3-33.1 is unconstitutional.²⁹

On the first, the court held that Georgia procedural law applied to all incidents, Georgia substantive law applies only to the incidents that occurred in Georgia, and Quebec substantive law applies to the incidents that occurred in Quebec.³⁰ On the second, the court concluded that Merchan could press a claim for the abuse that occurred in Quebec

22. When a party intends to make a claim regarding the laws of another state or country, that party must give notice to the opposing side. This notice may be given via pleading or "other reasonable written notice." If the party does not give notice of their intent, they lose the ability to rely on foreign law. The Harveys attempted to argue that Merchan could not amend her pleading to include the explicit claim under foreign law. The court concluded Merchan could still amend her pleading to include a claim under foreign law because there had not been a pre-trial order made in this case. *Id.* at 818, 860 S.E.2d at 570.

23. *Id.* at 813, 860 S.E.2d at 567; O.C.G.A. § 9-3-33.1.

24. The Harveys applied to the Georgia Supreme Court for interlocutory appeal after their motions were denied. At this procedural posture, parties can bring an interlocutory appeal for trial court's decision that does not result in final judgments. The court granted this appeal,

[T]o decide whether Georgia or Quebec law applies to Merchan's claims, whether O.C.G.A. § 9-3-33.1 can revive a cause of action for acts that did not occur in Georgia, and whether Georgia's constitutional ban on retroactive laws and the due process and equal protection clauses of the federal and state constitutions would bar Merchan's pursuit of such a cause of action against her parents.

Harvey, 311 Ga. at 811, 860 S.E.2d at 566.

25. *Id.* at 813, 860 S.E.2d at 567.

26. *Id.* at 823, 860 S.E.2d at 573.

27. *Id.* at 817, 860 S.E.2d at 569.

28. *Id.* at 814, 860 S.E.2d at 568.

29. *Id.* at 811-12, 860 S.E.2d at 566.

30. *Id.*

alongside her claims from Georgia.³¹ On the third, the Court determined that whichever statute of limitations was shorter—Georgia’s or Quebec’s—would apply.³² The court remanded this case to the trial court to determine which statute of limitations is shorter and should apply.³³ On the fourth, the court determined the continuing tort theory does not apply to sexual assault claims.³⁴ Finally, the court held that the HPA is constitutional.³⁵ The court expanded the scope of the Hidden Predator Act to include civil claims for acts of abuse occurring outside of Georgia.³⁶

III. LEGAL BACKGROUND

A. *An Overview of the Hidden Predator Act*

1. **Hidden Predator Act of 2015**

a. Hidden Predator Act Today

Georgia’s Hidden Predator Act of 2015 opened the door for childhood sexual assault survivors to sue as an adult if their claims had become time-barred.³⁷ Currently, the wording of the HPA allows survivors to sue “on or before” they turn twenty-three and within two years of when they “knew or had reason to know” of their abuse.³⁸ A brief, two-year revival period in the Act allowed “time-barred” plaintiffs of a “civil action for injuries resulting from childhood sexual abuse” to be revived, but this revival time has since been closed.³⁹

The HPA has led to certain instances of redress for survivors. It helped lead to the wave of sexual abuse claims against USA Gymnastics (USAG) doctors and coaches, which ultimately led to the Larry Nassar (Nassar)

31. *Id.*

32. *Id.*

33. *Id.* at 812, 860 S.E.2d at 566.

34. *Id.* at 815, 860 S.E.2d at 568.

35. *Id.* at 823, 860 S.E.2d at 573.

36. *Id.* at 811–12, 860 S.E.2d at 566.

37. O.C.G.A. § 9-3-33.1

38. *Id.*

39. This retroactive period closed in 2017 and was only open for survivors to sue individual perpetrators, not institutions. Merchan sued during this revival period. Her claims were previously time barred, but the provision in the Hidden Predator Act allowed her claims to be revived for a short period. Legislators expected this Act would bring about far more litigation than it has thus far. Despite this expectation not being met, there have been instances where survivors were compensated through the HPA. *Id.*; *Harvey*, 311 Ga. at 811, 860 S.E.2d at 565.

sexual abuse scandal.⁴⁰ A Georgia case was “ground zero [for] the litigation and fallout of USA Gymnastics.”⁴¹ In *Jane Doe v. USA Gymnastics*, a Savannah resident sued her USAG coach, William McCabe (McCabe), for sexual abuse.⁴² Jane Doe was not the only victim, and McCabe is now serving a thirty-year sentence for child sexual exploitation from a separate case.⁴³ After *Jane Doe*, The Indianapolis Star (IndyStar) launched multiple investigations into USAG and their coverup of sexual abuse.⁴⁴ IndyStar intervened in Jane Doe’s suit, and the HPA allowed them to retrieve documents from USAG, proving it was covering up abuse.⁴⁵ These documents exposed allegations and sexual harassment complaints against McCabe.⁴⁶ IndyStar published an article about the case and investigation, which encouraged over 150 survivors to come forward about their abuse by Nassar and about their reports to USAG.⁴⁷ Jane Doe’s courage compelled these survivors to speak out against USAG, and the investigation results exposed the coverup, which led to USAG’s leadership upheaval. *Jane Doe* also encouraged the fight for HPA legislation to hold organizations liable for coverups.⁴⁸

40. Beau Evans, *Ga. House Panel Considers Reviving ‘Hidden Predator Act’ for 2020*, GEORGIA RECORDER (Oct. 25, 2019), <https://georgiarecorder.com/2019/10/25/ga-house-panel-considers-reviving-hidden-predator-act-for-2020/>; Riley Bunch, *State Poised to Reopen Hidden Predators Act*, VALDOSTA DAILY TIMES (Oct. 31, 2019), https://www.valdostadailytimes.com/news/local_news/state-poised-to-reopen-hidden-predators-act/image_5f721356-d7f5-53b9-b2fb-788575767c88.html.

41. Alaa Elassar, *How a Georgia Case, Law Paved the Way for USA Gymnastics Doctor’s Downfall*, ATLANTA J. CONST. (Jan. 26, 2018), <https://www.ajc.com/news/state-regional-govt-politics/how-georgia-case-law-paved-way-for-usa-gymnastics-doctor-downfall/e0Cddwf56ivelwcQiKp130/>.

42. Specifically, Jane Doe sued for sexual exploitation. *Jane Doe v. USA Gymnastics* was filed in 2013 and settled in 2018 on confidential terms. Jane Doe nor her family signed a non-disclosure agreement. This settlement came around the same time as the 150 survivors told their stories of abuse by Nassar. Elassar, *supra* note 41; see Kathryn Tucker, *‘Jane Doe’ Behind USA Gymnastics Case Steps into Spotlight to Honor Survivors*, DAILY REPORT (Apr. 25, 2019), <https://www.law.com/dailyreportonline/2019/04/25/jane-doe-behind-usa-gymnastics-case-steps-into-spotlight-to-honor-survivors/?slreturn=20220027163808>.

43. Elassar, *supra* note 41.

44. Tucker, *supra* note 42.

45. Elassar, *supra* note 41. The Act required agencies to make records of child sexual abuse available to the survivor, regardless of the status of the case. *Id.*

46. *Id.*

47. Tim Evans, *IndyStar Seeks to Unseal Abuse Documents*, INDYSTAR (Aug. 4, 2016), <https://www.indystar.com/story/news/investigations/2016/08/04/indystar-seeks-unseal-usa-gymnastics-coach-abuse-documents/87912400/>.

48. Evans, *supra* note 47; see also Juliet Mancur, *U.S.A. Gymnastics and Abuse Survivors Propose a \$425 Million Payout*, N.Y. TIMES (Aug. 31, 2021),

b. Statute of Limitations

Prior to the implementation of the HPA, Georgia’s statute of limitations against claims of childhood sexual abuse was one of the narrowest in the United States because it did not provide survivors time to process or acknowledge their abuse.⁴⁹ The civil statute of limitations applied to abuse up until the survivor was twenty-three for claims against individual perpetrators and twenty for claims against all other defendants.⁵⁰ Georgia’s current statute of limitations covers abuse that occurred until the survivor turned twenty-three and allows for a delayed discovery window of two years.⁵¹

c. Delayed Discovery Window

The delayed discovery window allows survivors of abuse “committed on or after July 1, 2015,” to sue their abuser “[o]n or before the date the plaintiff attains the age of 23 years; or [w]ithin two years from the date the plaintiff knew or had reason to know of such abuse and that such abuse resulted in injury to the plaintiff as established by competent medical or psychological evidence.”⁵² The delayed discovery window of two years after the date of discovery allows survivors time to acknowledge or process their abuse in therapy. If a survivor files under the delayed discovery window, there must be a pretrial hearing within six months of filing the action to prove the true date of discovery.⁵³ With this window in place, childhood sexual abuse claims “do not accrue until the victim knows two things: (1) that the conduct was abuse, and (2) that the abuse resulted in an injury. From that point, they have two years to bring a civil suit against the perpetrator.”⁵⁴

As this delayed discovery window is only open to people twenty-three or older that suffered abuse occurring on or after July 1, 2015, the courts

<https://www.nytimes.com/2021/09/01/sports/olympics/usa-gymnastics-payout-sexual-abuse.html>.

49. In 2002, Georgia’s statute of limitations for a survivor to bring suit was “age [twenty-three] against perpetrators and age [twenty] against other defendants.” Georgia’s limitation was not broadened to twenty-three until 2015. There was also no delayed discovery window in Georgia’s statute until the HPA’s passage in 2015. *Georgia Child Sex Abuse SOLs*, CHILDUSA, <https://childusa.org/law/georgia/sex-abuse-sol/> (last updated Apr. 21, 2021).

50. CHILDUSA, *supra* note 49.

51. O.C.G.A. § 9-3-33.1(2)(A).

52. *Id.*

53. O.C.G.A. § 9-3-33.1(2)(B).

54. Brief of Amicus Curiae for Petitioner at V, Philip Doe v. Saint Catholic Church, et al., 2022 Ga. LEXIS *59, (No. S21T0469).

have not seen much litigation under this provision yet.⁵⁵ Increased litigation may begin over the next several years due to the maturing age of the survivors, which will qualify them under the delayed discovery window.

2. Georgia's Attempts to Amend the Hidden Predator Act

Legislators have been seeking to raise the age limit for the tolling statute of limitation for the past few years.⁵⁶ Advocates for the age range increase have argued that many survivors do not realize they experienced abuse or cannot fully process their childhood sexual abuse until they reach a mature age.⁵⁷ Advocates for this change compare the long-term effects of childhood abuse to post-traumatic stress disorder that is experienced by veterans.⁵⁸

The proposed, updated version of HPA legislation will revisit the terms of the HPA and will be voted on in the Georgia General Assembly, beginning in January of 2022. The most recently proposed version of the HPA offered an even broader window for survivors to bring suit, but was not passed in the Senate.⁵⁹ That version proposed expansion of the age limit from twenty-three to fifty-two, and expanded the time limit of when the survivor “knew or had reason to know of the abuse” from two years to four years.⁶⁰ Survivors could also sue entities or organizations that

55. Telephone Interview with Emma Hetherington, Clinical Assistant Professor and Wilbanks Child Endangerment and Sexual Exploitation Clinic Director at the University of Georgia School of Law (Sept. 15, 2021).

56. These proposed age increases range from twenty-three to thirty-eight since 2018, and fifty-two in 2021. Child Victim Protection Act of 2021, Ga. H.R. Bill 109, Reg. Sess. (2021); Beau Evans, Capitol Beat News Service, *Georgia 'Hidden Predator' House Bill Widens Statute of Limitations for Child Sex Abuse Lawsuits*, ALBANY HERALD, https://www.albanyherald.com/news/georgia-hidden-predator-house-bill-widens-statute-of-limitations-for-child-sex-abuse-lawsuits/article_38a78b24-608d-11ea-a676-cf2ec7a8c290.html (last updated Apr. 12, 2021).

57. O.C.G.A. § 9-3-33.1.

58. Evans, *supra* note 56; “Child sexual abuse can have lifetime impacts on survivors—especially without support. It can impact educational outcomes, lead to heightened symptoms of posttraumatic stress disorder, higher suicidality, drug abuse, higher likelihood of teen pregnancy and chronic health issues.” This list of impacts on childhood sexual abuse survivors is not exhaustive, but these are the most prevalent. *YWCA is on a Mission: Child Sexual Abuse Facts*, YWCA (Sept. 2017), <https://www.ywca.org/wp-content/uploads/WWV-CSA-Fact-Sheet-Final.pdf> (elaborating further on the effects of childhood sexual abuse on the survivors).

59. The 2020 proposed version of the Act was known as the Child Victim Protection Act of 2021. It was passed in the House in February of 2021, twenty days after the oral arguments before the Georgia Supreme Court in *Harvey v. Merchan*. Ga. H.R. Bill 109, Reg. Sess. (2021).

60. O.C.G.A. § 9-3-33.1(2)(a).

owed a duty of care to the survivor, knew of the abuse, and did not interfere with eliminating the abuse, or covered up the abuse.⁶¹

Nonprofits and large institutions, such as Boy Scouts of America and the Roman Catholic Archdiocese of Atlanta, have strongly opposed any expansion.⁶² These institutions fear they will receive extreme backlash from expanding the statute of limitations and adding the coverup section of the legislation.⁶³ Those in opposition to the proposed change “[have warned] it could unleash a wave of litigation capable of crippling social-benefit groups like schools and churches.”⁶⁴

B. Choice of Law

1. The Doctrine of *Lex Loci Delicti*

When claims containing actions committed outside of Georgia are brought in front of a Georgia court with jurisdiction over the case, the Georgia court must determine the applicable law.⁶⁵ The court uses the doctrine of *lex loci delicti* to make this determination.⁶⁶ Under the doctrine of *lex loci delicti*, the governing substantive law is that of the place where the tort was committed.⁶⁷ The applicable substantive law is that of where the original tort occurred even though many damages of an emotional nature arise after the tort occurs, and potentially in another jurisdiction.⁶⁸

The location of the original tort is that where the original action occurred, not necessarily where the injuries occurred.⁶⁹ For example, in a recent Georgia Supreme Court decision, *Auld v. Forbes*, a minor was killed on a school field trip to Belize.⁷⁰ His mother argued that Georgia’s statute of limitations and substantive law should apply because the field

61. The proposed legislation applied to “institution[s], agenc[ies], firm[s], business[es], corporation[s], or other public or private legal organization[s].” O.C.G.A. § 9-3-33.1(d)(1).

62. Evans, *supra* note 40.

63. *Id.*

64. Evans, *supra* note 56.

65. *Auld v. Forbes*, 309 Ga. 893, 848 S.E.2d 876 (2020); *see also* Bullard v. MRA Holding, LLC, 292 Ga. 748, 751, 740 S.E.2d 622, 625–26 (2013) (holding a videotape taken in Florida but distributed nationwide and with the subject of the video residing in Georgia can still constitute an injury being sustained within Georgia for the basis of applicable substantive law).

66. *Auld*, 309 Ga. at 894, 848 S.E.2d at 879.

67. *Lex loci delicti* translates to “the law of the place where the injury was sustained.” *Id.*; *see Harvey*, 311 Ga. at 813, 860 S.E.2d at 567.

68. *Auld*, 309 Ga. at 894, 848 S.E.2d at 879.

69. *Id.*

70. *Id.* at 893, 848 S.E.2d at 878.

trip was planned in Georgia. The court dismissed her claim based on the statute of limitations having run because the Belizean period was shorter than Georgia's, and the events giving rise to the claim occurred in Belize.⁷¹ Although the planning of an event or the emotional effects following an event may transpire in another jurisdiction, the court must apply the jurisdiction's substantive law where the event occurred, even if the jurisdiction is outside of Georgia.⁷²

2. Applicable Procedural Law

Applicable statutes of limitations are procedural questions that are typically covered by the law of the jurisdiction where the action is brought.⁷³ Some claims based on foreign law are the exception to this general procedural rule.⁷⁴ This exception states:

[W]hen the applicable foreign law creates a cause of action that is not recognized in the common law and includes a specific limitation period, that limitation period is a substantive provision of the foreign law that governs, and it applies when it is shorter than the period provided for under Georgia law.⁷⁵

When foreign law creates a claim that is not recognized in common law, and that foreign law has a specific time limit, the statute of limitations of the foreign law will apply when it is shorter than the one afforded under Georgia law.⁷⁶

C. Continuing Tort Theory

Generally, the statute of limitations for personal injury claims begins to run as soon as the injury occurs.⁷⁷ The continuing tort theory affords plaintiffs an extended statute of limitations under certain circumstances.⁷⁸ A plaintiff can only sue under a continuing tort theory when both "the wrong and the injury are unknown to the plaintiff" until

71. The court reasoned that since the actual death giving rise to the suit occurred in Belize, that "the 'last event necessary' . . . took place in Belize, and that Belize was where the injury was suffered." *Id.* at 895, 848 S.E.2d at 879.

72. *Id.*

73. *Harvey*, 311 Ga. at 814, 860 S.E.2d at 567.

74. *Id.* (citing *Auld*, 309 Ga. at 895, 848 S.E.2d at 879).

75. *Harvey*, 311 Ga. at 814, 860 S.E.2d at 567 (quoting *Auld*, 309 Ga. at 895, 848 S.E.2d at 880).

76. *Harvey*, 311 Ga. at 814, 860 S.E.2d at 567; *Auld*, 309 Ga. at 895, 848 S.E.2d at 880 (internal quotations omitted).

77. *Everhart v. Rich's, Inc.*, 229 Ga. 798, 801, 194 S.E.2d 425, 428 (1972).

78. *Id.* at 802, 194 S.E.2d at 428.

after the injury occurred.⁷⁹ The application of this theory has been limited to personal injury claims.⁸⁰

The continuing tort theory applies when the injured party discovers both their injury and the wrongdoing after the injury occurred.⁸¹ Accordingly, in *Everhart v. Rich's Inc.*, the plaintiff suffered continued exposure to hazardous materials.⁸² Despite the plaintiff's injury occurring as soon as they encountered the materials, due to their lack of knowledge or warning of their exposure, the Georgia Supreme Court concluded the continuing tort theory applied.⁸³

The continuing tort theory applies when the injured party is unaware of the wrongdoing and the injury, but does not apply to claims of sexual abuse, according to the Georgia Supreme Court decision in *Harvey*.⁸⁴

D. Constitutional Challenges

1. Georgia's Ban on Retroactive Laws

According to the Georgia Constitution: "No . . . ex post facto law, retroactive law, or laws . . . shall be passed."⁸⁵ Retroactive laws are generally procedural laws, as they are statutes of limitations.⁸⁶ Statutes of limitations are procedural because they look only to if the party can

79. *Harvey*, 311 Ga. at 816, 860 S.E.2d at 569.

80. Child sexual abuse is a personal injury claim; it is a tort. *Id.* at 816, 860 S.E.2d at 568; *Everhart*, 229 Ga. at 801, 194 S.E.2d at 428 (1972).

81. *Everhart*, 229 Ga. at 802, 194 S.E.2d at 428–29.

82. *Id.* at 798, 194 S.E.2d at 425.

83. The tort in this case was one:

[O]f a continuing nature which tolls the statute of limitation so long as the continued exposure to the hazard is occasioned by the continued failure of the tortfeasor to warn the victim, and the statute of limitation does not commence to run under these circumstances until such time as the continued tortious act producing injury is eliminated . . . by an appropriate warning in respect to the hazard.

Id. at 802, 194 S.E.2d at 428.

84. *Harvey*, 311 Ga. at 815, 860 S.E.2d at 568.

85. GA. CONST. art. I, § 1, para. X. The court disagreed with each of the Harveys' arguments:

[T]hat by reviving all claims that had expired prior to enactment of the statute, former paragraph (d)(1) violate[d] both the Georgia Constitution's prohibition against ex post facto laws and their due process rights under the federal and state constitutions. The Harveys also argue[d] that former paragraph (d)(1) violate[d] their equal protection rights under the federal and state constitutions.

Harvey, 311 Ga. at 823–24, 860 S.E.2d at 573.

86. *Hunter v. Johnson*, 259 Ga. 21, 22, 376 S.E.2d 371, 372 (1989) (citing *Allrid v. Emory Univ.*, 249 Ga. 35, 37–38, 285 S.E.2d 521, 524 (1982); *Pritchard v. Savannah R. Co.*, 87 Ga. 294, 13 S.E.2d 493 (1891)).

sue to receive a remedy for their damages, but they do not have anything to do with a party having a vested right to sue.⁸⁷

Retroactive statutes of limitations are constitutional because defendants do not have a vested right in statutes of limitations.⁸⁸ Consequently, in *Canton Textile Mills, Inc. v. Lathem*, the Georgia Supreme Court held that a retroactive worker's compensation claim was constitutional because the legislative intent was to provide people with a remedy.⁸⁹ The court reasoned that legislatures could provide a remedy through a retroactive statute of limitations because parties have no right to any particular time period.⁹⁰ Thus, "[o]rdinarily, there is no constitutional impediment to giving retroactive effect to statutes that govern only procedure of the courts."⁹¹

2. Equal Protection Rights

The Equal Protection Clauses of the Fourteenth Amendment and Georgia's Constitution prohibit the denial of the equal protection of the laws for any person.⁹² When reviewing the constitutionality of civil statutes under these protections, courts first decide the applicable level of scrutiny.⁹³ The scrutiny levels differ between two classifications: suspect classification or fundamental rights, and every other issue.⁹⁴ The lowest level of scrutiny, rational basis review, is used when the issue does

87. *Hunter*, 259 Ga. at 22, 376 S.E.2d at 372.

88. The constitutionality of retroactive statute of limitations has been upheld by the Georgia Supreme Court on multiple occasions. *Canton Textile Mills, Inc. v. Lathem*, 253 Ga. 102, 104, 317 S.E.2d 189, 191–92 (1984); *see also* *Vaughn v. Vulcan Materials Co.*, 226 Ga. 163, 164, 465 S.E.2d 661, 662 (1996) (“[t]here is no vested right in a statute of limitation.”).

89. Generally, laws are only directed

[F]or the future, and usually will not be given retrospective operation. They will be given retrospective operation, however, when the language imperatively requires it, or when an examination of the act as a whole leads to the conclusion that such was the legislative purpose.

Canton Textile Mills, Inc., 253 Ga. at 104, 317 S.E.2d at 192.

90. *Id.* at 105, 317 S.E.2d at 192–93.

91. *Hunter*, 259 Ga. at 21, 376 S.E.2d at 372 (citing *Pritchard*, 87 Ga. at 294, S.E.2d at 493; *Allrid*, 249 Ga. at 37, 285 S.E.2d at 521).

92. These protections extend to both criminal and civil actions. U.S. CONST. amend. XIV, § 1; GA. CONST. art. I, § 1, para. 1.

93. *Harvey*, 311 Ga. at 827, 860 S.E.2d at 576.

94. Individual groups that have been historically discriminated against—due to race, religion, national origin, or alienage—fall in the suspect classification category. Fundamental rights are those laid out in the Constitution. *See* *Amber-Phillips v. SSM DePaul Health Center*, 459 S.W.3d 901 (Mo. 2015) (describing suspect classification).

not fall under suspect classification or infringe on fundamental rights.⁹⁵ When reviewing the statutes under the rational basis scrutiny level, “[e]qual protection is violated only if the means adopted by the statute, or the classifications used, are irrelevant to the government’s legitimate objective, or are altogether arbitrary.”⁹⁶

IV. COURT’S RATIONALE

In *Harvey*, the Georgia Supreme Court was tasked with deciding many questions regarding the applicability of Georgia law, Quebec law, and the HPA to each of Merchan’s claims.⁹⁷

A. *Statutory Analysis of O.C.G.A. § 9-3-33.1*

When a court decides the meaning of a statute, it must reflect on the text of the statute itself.⁹⁸ A court must interpret the statute “in its most natural and reasonable way, as an ordinary speaker of the English language would.”⁹⁹ When reviewing statutes, Georgia courts have also generally looked “to other provisions of the same statute, the structure and history of the whole statute, and the other law—constitutional, statutory, and common law alike—that forms the legal background of the statutory provision in question.”¹⁰⁰ Georgia courts have previously “presume[d] that the General Assembly meant what it said and said what it meant” when creating legislation.¹⁰¹ The Georgia Supreme Court followed this standard for statutory review and application here.¹⁰² The court first analyzed the wording of O.C.G.A. § 9-3-33.1 to conclude that claims from other jurisdictions could be brought under the statute. The court concluded that the statutory language at issue, “would be[,]” was

95. *Harper v. State*, 292 Ga. 557, 560, 738 S.E.2d 584, 588 (2013) (“[r]ational basis review involves a two-prong evaluation of the challenged statute.”).

96. *Id.* at 561, 738 S.E.2d at 588 (citing *Rainer v. State*, 286 Ga. 675, 677–78, 690 S.E.2d 827, 829 (2010)).

97. *Harvey*, 311 Ga. at 821, 860 S.E.2d at 572.

98. *Id.* (quoting *City of Marietta v. Summerour*, 302 Ga. 645, 649, 807 S.E.2d 324, 328 (2017)).

99. *Harvey*, 311 Ga. at 821–22, 860 S.E.2d at 572 (quoting *Deal v. Coleman*, 294 Ga. 170, 172–73, 751 S.E.2d 337, 341 (2013)).

100. *Zaldivar v. Prickett*, 297 Ga. 589, 591, 774 S.E.2d 688, 691 (2015) (quoting *May v. State*, 295 Ga. 388, 391–92, 761 S.E.2d 38 (2014)).

101. *Summeror*, 302 Ga. at 649, 807 S.E.2d at 328 (quoting *Deal*, 294 Ga. at 172, 751 S.E.2d at 337).

102. *Harvey*, 311 Ga. at 822, 860 S.E.2d at 572.

written broadly enough to cover abuse from outside of Georgia.¹⁰³ The statutory language demands:

[A]n assessment of past actions under the present set of circumstances, in this case whether those past acts would violate Georgia law. Implicit in this assessment is the assumption that the acts would be in violation of Georgia law if they occurred in Georgia. Moreover, nothing in the definition of childhood sexual abuse limits the statute's reach to crimes committed in Georgia.¹⁰⁴

The Harveys argued that O.C.G.A § 9-3-33.1 could only apply to acts within Georgia—which would exclude the Quebec claims—because supposedly, acts outside of the state could not violate Georgia statutes.¹⁰⁵ The court disagreed and determined that since the statute covered acts that “would be in violation of an enumerated statute[,]” the legislature did not intend for the statute to cover only acts that occurred in Georgia.¹⁰⁶ This court determined the wording of O.C.G.A § 9-3-33.1 was written broadly enough to include abuse that occurred outside of Georgia.¹⁰⁷

B. Choice of Law

Generally, the applicable procedural law is that of the forum state.¹⁰⁸ However, this case falls under an exception to the general rule.¹⁰⁹ Foreign statutes of limitations apply when the foreign law claim is not recognized in common law, the foreign law has a specified statute of limitations, and that limitation is shorter than Georgia's.¹¹⁰ When claims come from civil law and not common law, statutes of limitations are treated as substantive rather than procedural.¹¹¹ Merchan's claims from Quebec arose from a cause of action created by civil code, not common law,

103. The statutory portion at issue defined childhood sexual abuse as “any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under 18 years of age and which act would be in violation of enumerated crimes as prohibited by Georgia statutes, including rape, child molestation, incest, sexual battery, and aggravated sexual battery.” *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 817, 860 S.E.2d at 569.

109. *Id.* at 814, 860 S.E.2d at 567.

110. *Id.*

111. *Id.*

because Quebec is a civil law jurisdiction.¹¹² As some of Merchan's claims arose from Quebec civil code, the Quebec statute of limitations will apply if it is shorter than Georgia's.¹¹³ The issue of which statute of limitations is shorter has not been litigated, and the decision of which is shorter was remanded to the trial court.¹¹⁴

Additionally, the Harveys argued Quebec law could not be reviewed here because Merchan waived her right to argue under foreign law in her pleadings, but the court disagreed.¹¹⁵ Despite Merchan not directly pleading under foreign law, the court concluded she was not barred from relying on foreign law.¹¹⁶ While the court allowed the claims for acts that occurred in Canada to be heard in Georgia, Merchan still had to establish proper jurisdiction and venue with the court for all claims to be heard.¹¹⁷ These claims had jurisdiction and venue because each party was a resident of Georgia.¹¹⁸

The court then looked to the doctrine of *lex loci delicti* to determine the applicable substantive law for each claim.¹¹⁹ Normally, this doctrine applies the procedural law of the forum state to every claim, but because of the foreign law exception, Quebec's statute of limitations becomes substantive law that may apply to certain claims.¹²⁰ Georgia's substantive law applies to every claim, but depending on where the tort occurred, there may be a difference in which statute of limitations applies.¹²¹ The court relied on *lex loci delicti* to determine Georgia's substantive law applies, and the foreign law exception to determine the statute of limitations applies depending on which jurisdiction the tort occurred in.¹²²

112. Quebec has a civil law system, but every state except Louisiana has a common law system. *Id.* at 817, 860 S.E.2d at 569.

113. *Id.*

114. *Id.* at 817, 860 S.E.2d at 569–70.

115. *Id.* at 818, 860 S.E.2d at 570.

116. *Id.*

Under O.C.G.A. § 9-11-43 (c), '[a] party who intends to raise an issue concerning the law of another state or of a foreign country shall give notice in his pleading or other reasonable written notice' Under this statute, a party waives the ability to rely on foreign law when the party fails to provide reasonable notice of its intent to rely on foreign law [T]he Harveys have not established that Merchan cannot now amend her pleadings to provide such notice.

117. *Id.* at 819, 860 S.E.2d at 570.

118. *Id.* at 812, 860 S.E.2d at 566.

119. *Id.* at 813, 860 S.E.2d at 567.

120. *Id.* at 814, 860 S.E.2d at 567.

121. *Id.*

122. *Id.* at 814, 860 S.E.2d at 568.

C. Continuing Tort Theory

Further, the court rejected Merchan's argument that the continuing tort theory applies to her claims.¹²³ Merchan wanted the continuing tort theory to apply because each act of sexual abuse would be a Georgia claim, regardless of where the act occurred.¹²⁴ As she allegedly endured over twenty years of weekly, if not daily, abuse, it would be difficult to prove each separate claim.¹²⁵ As the continuing tort theory applies when the injured is unaware of the wrongdoing and the injury, the court decided this theory does not apply to claims of sexual abuse—even if the abuse occurs for an extended period and the extent of the abuse is not fully comprehended until years later.¹²⁶ The court reasoned that the survivor is aware of the completion of the tort when it occurs, especially in cases of “violent external means” of abuse.¹²⁷ Therefore, a sexual assault survivor has a discreet, separate claim every time an independent action of abuse begins and is complete each time it ends.¹²⁸

D. Constitutionality of O.C.G.A. § 9-3-33.1

Finally, the court reviewed the constitutional rights afforded under Georgia's retroactive law prohibition and the equal protection clauses to determine O.C.G.A. § 9-3-33.1 does not violate either.¹²⁹ First, the Harveys argued the statute violated Georgia's prohibition of retroactive laws.¹³⁰ Both the United States Supreme Court and the Georgia Supreme Court stated statutes of limitations for civil claims that were reopened by legislation “have ‘never been regarded’” as a “fundamental right.”¹³¹ Since statutes of limitations are not constitutional rights, the Harveys did not have a fundamental right in the statute.¹³² Thus, the court used

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 815–16, 860 S.E.2d at 568.

127. *Id.* at 816, 860 S.E.2d at 569 (quoting *Everhart*, 229 Ga. at 801, 194 S.E.2d at 428).

128. *Id.* at 816, 860 S.E.2d at 568.

129. *Id.* at 823–24, 860 S.E.2d at 573–74.

130. *Id.* at 824, 860 S.E.2d at 574.

131. *Id.* (quoting *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945)); see *Campbell v. Holt*, 115 U.S. 620 (1885).

132. *Harvey*, 311 Ga. at 826, 860 S.E.2d at 575.

rational basis review.¹³³ Upon review, the court concluded civil revival statutes are constitutional.¹³⁴

Further, the Harveys argued the statute was unconstitutional by comparing it to other states' laws—using Kansas law as persuasive authority.¹³⁵ Again, the court did not agree; “[t]he mere fact that other states have construed their state laws differently is insufficient reason to reconsider our own precedent.”¹³⁶ The constitutionality question regarding this statute was fully settled and established in Georgia by this decision, especially the Equal Protection argument. The Due Process argument had been addressed in prior decisions, but the Equal Protection argument had not yet been addressed. The court decided this statute does not violate any constitutional rights.¹³⁷

V. IMPLICATIONS

Abuse comes in many forms, and survivors often need decades to process and acknowledge their abuse. Georgia's HPA allows survivors the chance to receive civil remedies for their childhood sexual abuse.¹³⁸ The goal of the HPA is to provide survivors a civil remedy, while also affording survivors the time to process, and acknowledge their abuse before suing their abuser. Although this is the HPA's goal, it does not properly provide these remedies because implementing this Act is difficult.¹³⁹ Some shortcomings of the current HPA include the time lapse between the actual abuse and when the case is tried, and the decrease in empathy that comes with hearing an adult speak about their childhood trauma rather than hearing it directly from a child. Further, the HPA is difficult to implement due to the inability to bring suits against entities.¹⁴⁰

133. *Id.* Under rational basis review, the Harveys had the burden of proving they were treated differently than other individuals in this position, and that there was no rational basis for their treatment. The Harveys did not meet their burden here.

134. See Brief of Amicus Curiae Child USA in Support of Appellee at IV (A), *Harvey v. Merchan*, 311 Ga. 811, 860 S.E.2d 561 (2021).

Georgia is on a growing list of at least 29 jurisdictions which have enacted various laws to revive previously expired child sex abuse claims, and stands alongside Arizona, California, Delaware, Florida, Hawaii, Michigan, Minnesota, Montana, New Jersey, New York, North Carolina, Utah, Vermont, Virginia, District of Columbia, and Guam, which have done so explicitly with a time-limited revival window.

135. *Harvey*, 311 Ga. at 824–25, 860 S.E.2d at 574.

136. *Id.* at 825, 860 S.E.2d at 574.

137. Interview with Devin Mashman, Oral Arguer Before the Georgia Supreme Court for *Merchan* (Sep. 14, 2021); see also *Chase Securities Corp.*, 325 U.S. at 314.

138. O.C.G.A. § 9-3-33.1.

139. Mangan, *supra* note 5.

140. *Id.*

Entities should be included in the possible defendants under the HPA because the threat of money is typically not a deterrent for individual abusers, so the Act is not providing much compensation or deterrence of abuse. Entities are more likely to be deterred than an individual abuser when they know they will be held monetarily liable.¹⁴¹ If the legislation does not include entities, it is not affording a large portion of survivors redress, nor is it deterring a large portion of abuse coverups.

Georgia's proposed version of the HPA allows survivors to sue entities for their knowledge of the abuse and coverups of the abuse. If the legislation passes, it may increase the amount of litigation brought towards corporations and other large businesses.¹⁴² The argument for prohibiting smaller organizations from being held accountable due to their lack of resources is not convincing. If any organization is covering up abuse, it should be held responsible, regardless of its size or number of resources. To further protect children by deterring abuse and providing all survivors with redress, the legislation must include entities in the Act.

Georgia is not alone in its retroactive civil remedy for childhood sexual abuse.¹⁴³ Other jurisdictions have adopted similar acts—such as Oklahoma (Hidden Predator Act¹⁴⁴) and New York (Child Victims Act¹⁴⁵ and Adult Survivors Act¹⁴⁶)—but many states have yet to follow suit.¹⁴⁷

141. Further, including entities in future legislation will provide far more survivors with remedies, and hopefully deter childhood abuse, because the threat of monetary damages is far more convincing to encourage an entity not to act than it is to an individual abuser. Emma Heatherington et. al., *Statute of Limitations for Child Sexual Abuse Civil Lawsuits in Georgia Update on Case Findings and Opportunities for Reform*, CEASE (Apr. 8, 2019), <https://cease.law.uga.edu/sites/default/files/u61/2018-2019%20CEASE%20White%20Paper%20April%208%202019.pdf>.

142. Ga. H.R. Bill 109 (2021) (introduced).

143. Twenty-nine other jurisdictions have enacted similar statutes. Devin Mashman, *Retroactive Civil Statutes of Limitation and Due Process in the Child Sex Abuse Context: The Unique Need to Access Georgia Courts*, 15 CHARLESTON L. REV. 665, 671 (2021) (discussing the need for retroactive civil limitations).

144. Ok. H.R. Bill 1468, 56 Leg. (2017).

145. Ny. S. Bill S2440, Reg. Sess. (2019); *see also* Ar. S. Bill 676 (Justice for Vulnerable Victims of Sexual Abuse), 93 Gen. Assemb. (2021) (extending the civil childhood sexual abuse statute of limitations from age twenty-one to age fifty-five and opening a two-year revival period window); Co. S Bill 21-073, 73 Gen. Assemb. (2021) (eliminating the civil statute of limitations for childhood sexual assault and sexual assault of adults).

146. Ny. S. Bill 66, Reg. Sess. (2021); *see also* Md. H.R. Bill 974 (2020) (enacting the Maryland Hidden Predator Act of 2020 and attempting to pass the Hidden Predator Act of 2021 during the 2021 General Assembly, but the newest version of the bill was not passed).

147. If other similar acts are proposed in the future, it is probable the statute of limitations age increase will be implemented from Georgia's newest proposal of the Act. The argument for the age increase is solidified enough that if other states will implement acts of their own, the legislators will probably look to the discoveries Georgia legislators

There is a potential for similar acts to be passed in other jurisdictions, but most states do not have acts like the HPA, nor are they proposing any at this time.¹⁴⁸ Legislators predicted Georgia's HPA would significantly increase the amount of civil litigation.¹⁴⁹ Although it has increased, the increase has been minimal and far below the level expected. This decision may substantially increase litigation, allowing survivors to bring suit for abuse that occurred elsewhere if their claims have jurisdiction in Georgia. These claims must still have the proper subject matter jurisdiction, personal jurisdiction, and venue to be heard within the state. As the *Harvey* decision clarified that the wording of the HPA applies to abuse occurring outside the state of Georgia, survivors may feel more freedom to bring suit under the Act.¹⁵⁰

After this case, sexual abuse survivors will be aware that the continued tort theory does not apply to claims of sexual abuse, and that each instance of abuse is a separate claim.¹⁵¹ Survivors will also be aware that they can bring suit under the HPA, even for claims from outside of Georgia, because the court confirmed its constitutionality. If this case had been decided differently, the ability for many survivors to receive damages for their childhood sexual abuse would have been closed off because their claims would have been time-barred. Despite this possible outcome, it is more probable that this decision will encourage survivors to bring suit, regardless of where the abuse occurred, if there is proper jurisdiction in Georgia. The court resolved that the HPA could be used

made in determining how long it takes a survivor to discover their abuse. As for the future of Georgia's Act, the age may increase if the proposed legislation passes, but it is unlikely to increase much more than that, if at all, due to the lack of evidence of childhood sexual abuse that anyone over the age of fifty-two could procure. Ga. H.R. Bill 109 (2021).

148. Some states are enacting laws with an opposite message towards survivors of all ages. Under Texas' newest abortion law, S.B. 8, survivors have little to no civil remedy for rape or incest. Instead, survivors could be punished for the actions of their abuser. If a Texan's abuse also occurred in Georgia, or their abuser resides in Georgia, the *Harvey* decision could potentially offer them civil relief for their abuse. The trend of the Texas legislature could potentially be the trend of many jurisdictions. *See, e.g.*, Tex. S. Bill 8, 87 Leg. (2021) (enacted).

149. Still, the HPA's goal of providing civil remedies to survivors is far more important than the number of judicial resources potentially used. *Harvey*, 311 Ga. at 811, 860 S.E.2d at 565.

150. *Id.*; O.C.G.A. § 9-3-33.1.

151. This decision on the continued tort theory determines that acts of abuse are acts where the abuse occurred, even if the continued effects of the abuse are felt in Georgia. *Harvey*, 311 Ga. at 816, 860 S.E.2d at 568.

for cases of this nature, which opens the door for more survivors to receive redress.¹⁵²

While the court in *Harvey* and the HPA have made great strides to provide remedies for survivors and deter abuse, the legislation has not fully taken the necessary steps to achieve these goals. Until the legislation adds the possibility for suits against entities and raises the tolling discovery age, survivors will not be adequately protected from or compensated for their abuse.

152. Cases of this nature can be brought under the HPA, but the facts of this case are rare, because not many survivors are moved across country lines while experiencing the abuse. Children are moved across state lines while experiencing abuse quite regularly, but less often are they moved across country lines, as was the case here. *Id.* at 812, 860 S.E.2d at 566.