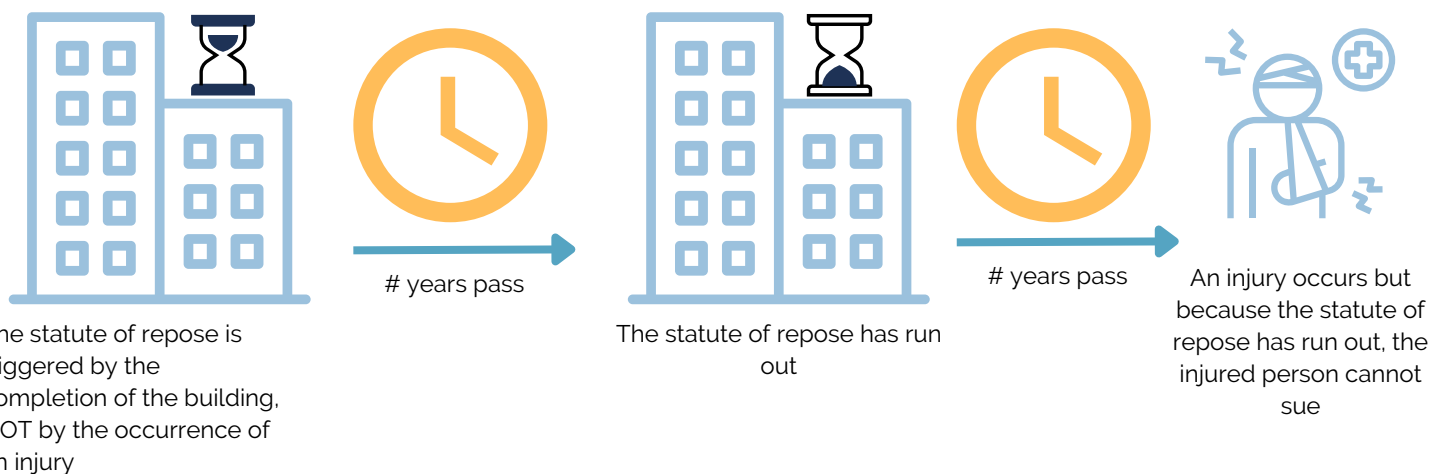


Statutes of Repose

What are statutes of repose?

Statutes of Repose prevent an injured person from bringing a claim regardless of whether the cause of action has accrued or whether the injured person should have known that a claim existed. The event that triggers the time limitation to start in a statute of repose is unrelated to whether or when an injury occurred.

The purpose of a statute of repose is to prevent unpredictability for industry and professionals engaged in certain trades and to protect insurers' ability to predict future claims. These protections allow for stability in the marketplace from which we all benefit.



Does Maryland have any statutes of repose?

Maryland
has 1
statute of
repose

Section 5-108 of the Courts & Judicial Proceedings Article contains a statute of repose for improvements to real property and to related professionals who are well-trained and educated and highly regulated, like architects. According to the Supreme Court of Maryland, the General Assembly uses statutes of repose in "consideration[] of the *economic best interests of the public.*" *SVF Riva Annapolis v. Gilroy*, 459 Md. 632, 636 n.1 (2018). ***We know that capital improvements are economic drivers; this statute of repose reflects our public interest in a strong economy.***

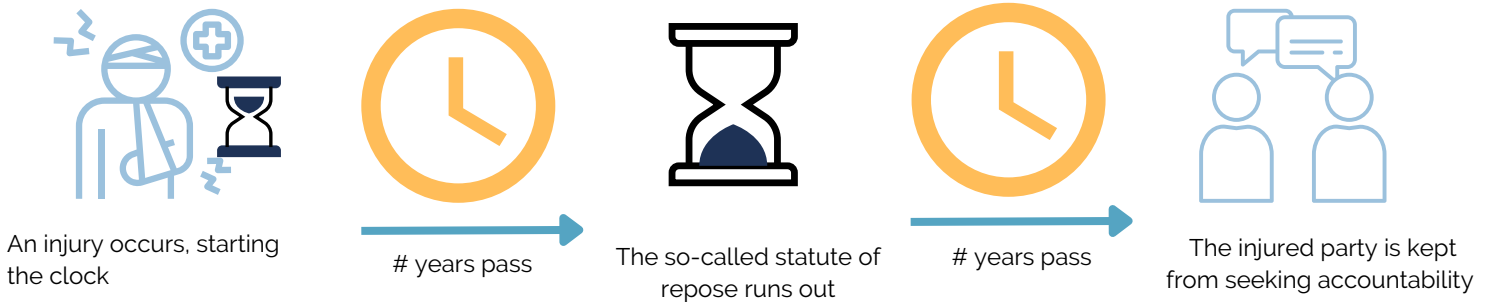
Note that §5-108 is not absolute; the statute contains an exception for asbestos-related claims. So even when protecting the economy with the statute of repose, the General Assembly sought to also protect the public interest for these significant health-related claims.

As with statutes of repose in other states, Maryland's statute relates to professions and an industry that are highly regulated. Professional architects and engineers are required to meet minimum education and experience qualifications for licensure. Builders are required to be licensed and meet certain qualifications. These requirements are protections designed to prevent negligent conduct that would create harm.

Statutes of Repose

Is Courts and Judicial Proceedings §5-117(d) a Statute of Repose?

This is an open question, the best answer to which is **no, the General Assembly did not provide sexual predators and those who hid the abuse and protected the abusers with a constitutionally protected right to avoid liability.** Section 5-117(d) of the Courts & Judicial Proceedings Article and uncodified language related to that section purport to create a statute of repose on certain child sexual abuse claims. The hallmark of a statute of repose is that the triggering event that starts the clock on the time limitation is unrelated to when or whether an injury has occurred. Section 5-117(d) does not meet that description as the clock cannot start to run until injury has occurred; there is no date certain on which the time period will expire.



Moreover, applying a statute of repose in the context of interpersonal violence, particularly protecting those who sexually assault children and those who harbor sex offenders, is a significant departure from Maryland law, does not fall within the purpose of statutes of repose, and is an inappropriate mechanism that could prevent survivors from suing their abusers and those who harbored them. Sexual predators and those who hide and protect them are not economic drivers deserving special protection; they are not highly regulated professionals trained to avoid mistakes. They are gruesome criminals and irresponsible, culpable organizations that impose the worst type of harm in our communities. **Protecting child sexual predators and those who harbored them is not in the public interest.**

That §5-117 is not a statute of repose is consistent with the legislative intent from 2017 when subsection (d) and the uncodified language was added. It is apparent that the General Assembly never intended to create a vested right in child sexual abusers and the entities that sheltered them. The 2017 bill files for House Bill 642 and Senate Bill 505, include no discussion or debate, either in Committee or on the Floor of the House or Senate, regarding the constitutional implications of a statute of repose. Delegate Atterbeary noted that permanent immunity from liability “was never discussed,” and Senator Zirkin stated “it wasn’t anyone’s intent” to grant permanent immunity. Erin Cox and Justin Moyer, *When Maryland Gave Abuse Victims More Time to Sue, it May Have Also Protected Institutions, Including the Catholic Church*, WASH POST (Mar. 31, 2019).

Section 5-108 of the Courts & Judicial Proceedings Article Section 5-117(d) of the Courts & Judicial Proceedings Article and uncodified language related to that section

Who is protected?	Professions and an industry that are highly regulated, ex. architects, engineers	Child sex abusers, sexual predators, irresponsible and culpable organizations
Who is impacted?	People in buildings that have been improved upon	Survivors of child sexual abuse
What is the timing?	The statute of repose is triggered by the completion of capital improvements and the time period expires on a set date.	The statute is triggered by an injury and there is no date certain on which the time period will expire

Statutes of Repose

A majority of Maryland legislators have voted to repeal the 2017 changes and allow a limited opportunity for victims to bring claims based on decades-old harm. In 2019, when House Bill 687 (Hidden Predator Act of 2019) was introduced to, in part, repeal the so-called statute of repose, legislators in both Chambers reiterated that they had not intended to create a vested right for defendants in 2017. The 2019 bill passed on the House floor by a vote of 135-3 before it failed in the Senate Judicial Proceedings Committee by a 5 to 5 vote. The Hidden Predator Act of 2020, House Bill 974, passed the House 127-0 but did not get a vote in the Senate Judicial Proceedings Committee before the early closure due to the pandemic.

NOTHING in the legislative record from 2017 indicates that the General Assembly intended to provide this EXCEPTIONAL protection to organizations that failed to protect children from the most horrific kind of harm. Maryland courts require clarity when the legislature creates an exceptional right protected by the constitution. Section 5-117(d) does not operate like a statute of repose and should not be construed as one.

Only one other state (Illinois) has a statute of repose protecting sexual predators and those who harbored child sexual predators under their supervision. And that law includes a provision tolling the time period in certain instances, such as if the organization that harbored the abuser threatened the victim or fraudulently concealed the abuse. This is such an outlandish notion that only one state has adopted a limited version of a statute of repose. Rather, there is a trend among the states to extend civil statutes of limitation for child sexual abuse claims or to eliminate them entirely. That would be far more consistent with Maryland's goal of protecting children from abuse.

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