

SENATE, No. 487

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

Co-Sponsored by:

Senators Turner, Sweeney and Karcher

SYNOPSIS

Eliminates the statute of limitations in civil actions for sexual abuse; clarifies accrual of certain causes of action and modifies the Charitable Immunity Act.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/11/2007)

1 AN ACT concerning civil actions alleging sexual abuse and
2 amending N.J.S.2A:14-2, P.L.1959, c.90 and P.L.1992, c.109
3 and supplementing Title 2A of the New Jersey Statutes.
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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. N.J.S. 2A:14-2 is amended to read as follows:

9 2A:14-2. Every action at law for an injury to the person caused
10 by the wrongful act, neglect or default of any person within this
11 state shall be commenced within 2 years next after the cause of any
12 such action shall have accrued; except any civil action brought
13 pursuant to section 1 of P.L.1992, c.109 (C.2A:61B-1), subsections
14 c. and d. of section 1 of P.L.1959, c.90 (C.2A:53A-7) or section 3
15 of P.L. , c. (C.) (now pending before the Legislature as section
16 3 of this bill) may be commenced at any time.

17 (N.J.S.2A:14-2)

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19 2. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to read
20 as follows:

21 1. a. No nonprofit corporation, society or association organized
22 exclusively for religious, charitable or educational purposes or its
23 trustees, directors, officers, employees, agents, servants or
24 volunteers shall, except as is hereinafter set forth, be liable to
25 respond in damages to any person who shall suffer damage from the
26 negligence of any agent or servant of such corporation, society or
27 association, where such person is a beneficiary, to whatever degree,
28 of the works of such nonprofit corporation, society or association;
29 provided, however, that such immunity from liability shall not
30 extend to any person who shall suffer damage from the negligence
31 of such corporation, society, or association or of its agents or
32 servants where such person is one unconcerned in and unrelated to
33 and outside of the benefactions of such corporation, society or
34 association.

35 Nothing in this subsection shall be deemed to grant immunity to
36 any health care provider, in the practice of his profession, who is a
37 compensated employee, agent or servant of any nonprofit
38 corporation, society or association organized exclusively for
39 religious, charitable or educational purposes.

40 b. No nonprofit corporation, society or association organized
41 exclusively for hospital purposes or its trustees, directors, officers
42 or volunteers shall, except as is hereinafter set forth, be liable to
43 respond in damages to any person who shall suffer damage from the
44 negligence of any agent or servant of such corporation, society or
45 association, where such person is a beneficiary, to whatever degree,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 of the works of such nonprofit corporation, society or association;
2 provided, however, that such immunity from liability shall not
3 extend to any person who shall suffer damage from the negligence
4 of such corporation, society, or association or of its agents or
5 servants where such person is one unconcerned in and unrelated to
6 and outside of the benefactions of such corporation, society or
7 association; but nothing herein contained shall be deemed to exempt
8 the agent , employee or servant individually from their liability for
9 any such negligence.

10 c. Nothing in this section shall be deemed to grant immunity to:
11 (1) any trustee, director, officer, employee, agent, servant or
12 volunteer causing damage by **[a willful, wanton or grossly]** any
13 negligent act of commission or omission, including acts of sexual
14 abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1),
15 sexual assault and other crimes of a sexual nature; (2) any trustee,
16 director, officer, employee, agent, servant or volunteer causing
17 damage as the result of the negligent operation of a motor vehicle;
18 or (3) an independent contractor of a nonprofit corporation, society
19 or association organized exclusively for religious, charitable,
20 educational or hospital purposes.

21 d. Nothing in this section shall be deemed to grant immunity to
22 any nonprofit corporation, society or association organized
23 exclusively for religious, charitable, educational or hospital
24 purposes for the negligent hiring or negligent supervision of any
25 agent or servant of such corporation, society or association which
26 resulted in sexual abuse, sexual assault or other crimes of a sexual
27 nature committed against a person who was a beneficiary of the
28 corporation, society or association.
29 (cf: P.L.1995,c.183, s.1).

30
31 3. (New section). Notwithstanding any other provision of law to
32 the contrary, a nonprofit corporation, society or association shall be
33 liable for the negligent hiring or negligent supervision of any agent
34 or servant of such corporation, society or association which resulted
35 in sexual abuse, sexual assault or other crimes of a sexual nature
36 committed against a person who was a beneficiary of the
37 corporation, society or association.

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39 4. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to read
40 as follows:

41 1. a. As used in this act:

42 (1) "Sexual abuse" means an act of sexual contact or sexual
43 penetration between a child under the age of 18 years and an adult.
44 A parent, foster parent, guardian or other person **[standing in loco**
45 **parentis within the household]** who knowingly permits or
46 acquiesces in sexual abuse by any other person also commits sexual
47 abuse, except that it is an affirmative defense if the parent, foster

1 parent, guardian or other person [standing in loco parentis] was
2 subjected to, or placed in, reasonable fear of physical or sexual
3 abuse by the other person so as to undermine the person's ability to
4 protect the child.

5 (2) "Sexual contact" means an intentional touching by the victim
6 or actor, either directly or through clothing, of the victim's or actor's
7 intimate parts for the purpose of sexually arousing or sexually
8 gratifying the actor. Sexual contact of the adult with himself must
9 be in view of the victim whom the adult knows to be present.

10 (3) "Sexual penetration" means vaginal intercourse, cunnilingus,
11 fellatio or anal intercourse between persons or insertion of the hand,
12 finger or object into the anus or vagina either by the adult or upon
13 the adult's instruction.

14 (4) "Intimate parts" means the following body parts: sexual
15 organs, genital area, anal area, inner thigh, groin, buttock or breast
16 of a person.

17 (5) "Injury or illness" includes psychological injury or illness,
18 whether or not accompanied by physical injury or illness.

19 b. In any civil action for injury or illness based on sexual abuse,
20 the cause of action [shall accrue at the time of reasonable discovery
21 of the injury and its causal relationship to the act of sexual abuse.
22 Any such action shall be brought within two years after reasonable
23 discovery] may be commenced at any time.

24 c. [Nothing in this act is intended to preclude the court from
25 finding that the statute of limitations was tolled in a case because of
26 the plaintiff's mental state, duress by the defendant, or any other
27 equitable grounds. Such a finding shall be made after a plenary
28 hearing. At the plenary hearing the court shall hear all credible
29 evidence and the Rules of Evidence shall not apply, except for Rule
30 403 or a valid claim of privilege. The court may order an
31 independent psychiatric evaluation of the plaintiff in order to assist
32 in the determination as to whether the statute of limitations was
33 tolled.] Deleted by amendment, P.L. .c. (now pending before the
34 Legislature as this bill).

35 d. (1) Evidence of the victim's previous sexual conduct shall not
36 be admitted nor reference made to it in the presence of a jury except
37 as provided in this subsection. When the defendant seeks to admit
38 such evidence for any purpose, the defendant must apply for an
39 order of the court before the trial or preliminary hearing, except that
40 the court may allow the motion to be made during trial if the court
41 determines that the evidence is newly discovered and could not
42 have been obtained earlier through the exercise of due diligence.
43 After the application is made, the court shall conduct a hearing in
44 camera to determine the admissibility of the evidence. If the court
45 finds that evidence offered by the defendant regarding the sexual
46 conduct of the victim is relevant and that the probative value of the
47 evidence offered is not outweighed by its collateral nature or by the

1 probability that its admission will create undue prejudice, confusion
2 of the issues, or unwarranted invasion of the privacy of the victim,
3 the court shall enter an order setting forth with specificity what
4 evidence may be introduced and the nature of the questions which
5 shall be permitted, and the reasons why the court finds that such
6 evidence satisfies the standards contained in this section. The
7 defendant may then offer evidence under the order of the court.

8 (2) In the absence of clear and convincing proof to the contrary,
9 evidence of the victim's sexual conduct occurring more than one
10 year before the date of the offense charged is presumed to be
11 inadmissible under this section.

12 (3) Evidence of the victim's previous sexual conduct shall not be
13 considered relevant unless it is material to proving that the source
14 of semen, pregnancy or disease is a person other than the defendant.
15 For the purposes of this subsection, "sexual conduct" shall mean
16 any conduct or behavior relating to sexual activities of the victim,
17 including but not limited to previous or subsequent experience of
18 sexual penetration or sexual contact, use of contraceptives, living
19 arrangement and life style.

20 e. (1) The court may, on motion and after conducting a hearing in
21 camera, order the taking of the testimony of a victim on closed
22 circuit television at the trial, out of the view of the jury, defendant,
23 or spectators upon making findings as provided in paragraph (2) of
24 this subsection.

25 (2) An order under this section may be made only if the court
26 finds that the victim is 16 years of age or younger and that there is a
27 substantial likelihood that the victim would suffer severe emotional
28 or mental distress if required to testify in open court. The order
29 shall be specific as to whether the victim will testify outside the
30 presence of spectators, the defendant, the jury, or all of them and
31 shall be based on specific findings relating to the impact of the
32 presence of each.

33 (3) A motion seeking closed circuit testimony under paragraph
34 (1) of this subsection may be filed by:

- 35 (a) The victim or the victim's attorney, parent or legal guardian;
- 36 (b) The defendant or the defendant's counsel; or
- 37 (c) The trial judge on the judge's own motion.

38 (4) The defendant's counsel shall be present at the taking of
39 testimony in camera. If the defendant is not present, he and his
40 attorney shall be able to confer privately with each other during the
41 testimony by a separate audio system.

42 (5) If testimony is taken on closed circuit television pursuant to
43 the provisions of this act, a stenographic recording of that testimony
44 shall also be required. A typewritten transcript of that testimony
45 shall be included in the record on appeal. The closed circuit
46 testimony itself shall not constitute part of the record on appeal
47 except on motion for good cause shown.

48 f. (1) The name, address, and identity of a victim or a defendant

1 shall not appear on the complaint or any other public record as
2 defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their place initials
3 or a fictitious name shall appear.

4 (2) Any report, statement, photograph, court document,
5 complaint or any other public record which states the name, address
6 and identity of a victim shall be confidential and unavailable to the
7 public.

8 (3) The information described in this subsection shall remain
9 confidential and unavailable to the public unless the victim consents
10 to the disclosure or if the court, after a hearing, determines that
11 good cause exists for the disclosure. The hearing shall be held after
12 notice has been made to the victim and to the defendant and the
13 defendant's counsel.

14 (4) Nothing contained herein shall prohibit the court from
15 imposing further restrictions with regard to the disclosure of the
16 name, address, and identity of the victim when it deems it necessary
17 to prevent trauma or stigma to the victim.

18 g. In accordance with R.5:3-2 of the Rules Governing the Courts
19 of the State of New Jersey, the court may, on its own or a party's
20 motion, direct that any proceeding or portion of a proceeding
21 involving a victim sixteen years of age or younger be conducted in
22 camera.

23 h. A plaintiff who prevails in a civil action pursuant to this act
24 shall be awarded damages [in the amount of \$10,000,] plus
25 reasonable attorney's fees[, or actual damages, whichever is
26 greater]. Actual damages shall consist of compensatory and
27 punitive damages and costs of suit, including reasonable attorney's
28 fees. Compensatory damages may include, but are not limited to,
29 damages for pain and suffering, medical expenses, emotional
30 trauma, diminished childhood, diminished enjoyment of life, costs
31 of counseling, and lost wages.
32 (cf: P.L.1999, c.393).

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34 5. The provisions of this amendatory and supplementary act,
35 P.L. ,c. (C.)(now pending before the Legislature as this bill),
36 shall be applicable to all pending claims, including any action
37 which has been filed with a court but not yet dismissed or finally
38 adjudicated.

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40 6. The provisions of this amendatory and supplementary act,
41 P.L. ,c. (C.)(now pending before the Legislature as this bill)
42 shall be inapplicable to any civil action governed by the statute of
43 limitations of another jurisdiction.

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45 7. This act shall take effect immediately.

STATEMENT

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Currently, N.J.S.A.2C:14-2 provides for a two year statute of limitations in most civil actions for an injury to a person caused by another person within this State. This bill would amend this section to eliminate the statute of limitations for cases which allege sexual abuse.

The bill would amend the Charitable Immunity Act to clarify that a trustee, director, officer, employee, agent, servant or volunteer would be liable if they acted in any negligent manner resulting in sexual abuse. Currently a trustee or officer would be held liable if they acted in a "willful, wanton or grossly" negligent manner. The bill would also make the nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes liable for the negligent hiring and supervision of an agent or servant if it resulted in sexual abuse being committed against a person who was a beneficiary of the organization.

In addition, the bill provides that any nonprofit corporation, society or association would be liable for the negligent hiring and supervision of an agent or servant if it resulted in sexual abuse being committed against a person who was a beneficiary of the organization.

The bill would also amend N.J.S.A.2A:61B-1 to eliminate the current statute of limitations for civil actions for sexual abuse. Currently, this section provides that a civil action may be brought within two years after reasonable discovery of the injury and its casual relationship to the act of sexual abuse. The bill would also eliminate the provision which authorizes the court to decide whether the statute of limitations was delayed in a sexual case because of the victim's mental state, duress by the accused or any other equitable grounds since this provision becomes unnecessary in light of the fact that the bill provides an unlimited time period within which to bring the action.

In addition, the bill would remove the language in N.J.S.A.2A:61B-1 which limited the law's provision to those adults "standing in loco parentis within the household." By removing this language from the law, a civil action for sexual abuse can be maintained against any adult. The bill also removes the limitation on the amount of damages a plaintiff could recover in a civil action for sexual abuse.

Finally, the provisions of this bill would apply to all pending claims, including any action which has been filed with a court but not yet dismissed or finally adjudicated. The bill's provisions would be inapplicable to any civil action governed by the statute of limitations of another jurisdiction.