

SENATE, No. 2405

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED NOVEMBER 15, 2010

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Removes statute of limitations in civil actions for sexual abuse; expands the categories of persons who are potentially liable in such actions.

CURRENT VERSION OF TEXT

As introduced.



S2405 VITALE, SCUTARI

2

1 AN ACT concerning civil actions alleging sexual abuse, amending
2 N.J.S.2A:14-2 and P.L.1992, c.109 and supplementing Title 2A
3 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2A:14-2 is amended to read as follows:

9 2A:14-2. a. **[Every]** Except as provided in subsections b. and c.
10 of this section, every action at law for an injury to the person
11 caused by the wrongful act, neglect or default of any person within
12 this State shall be commenced within two years next after the cause
13 of any such action shall have accrued**;** except that an action by or
14 on behalf of a minor that has accrued for medical malpractice for
15 injuries sustained at birth shall be commenced prior to the minor's
16 13th birthday**].**

17 b. (1) An action by or on behalf of a minor that has accrued for
18 medical malpractice for injuries sustained at birth shall be
19 commenced prior to the minor's 13th birthday.

20 (2) In the event that an action by or on behalf of a minor that has
21 accrued for medical malpractice for injuries sustained at birth is not
22 commenced by the minor's parent or guardian prior to the minor's
23 12th birthday, the minor or a person 18 years of age or older
24 designated by the minor to act on the minor's behalf may commence
25 such an action. For this purpose, the minor or designated person
26 may petition the court for the appointment of a guardian ad litem to
27 act on the minor's behalf.

28 c. An action brought pursuant to section 1 of P.L.1992, c.109
29 (C.2A:61B-1), paragraph (1) of subsection c. of section 1 of
30 P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005, c.264
31 (C.2A:53A-7.4) may be commenced at any time.

32 (cf: P.L.2004, c.17, s.3)

33
34 2. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to
35 read as follows:

36 1. a. As used in this act:

37 (1) "Sexual abuse" means an act of sexual contact or sexual
38 penetration between a child under the age of 18 years and an adult.
39 A parent, resource family parent, guardian **[or]**, other person
40 standing in loco parentis within the household or a person with
41 supervisory or disciplinary power of any nature or in any capacity
42 over the victim who knowingly permits or acquiesces in sexual
43 abuse by any other person also commits sexual abuse, except that it
44 is an affirmative defense if the parent, resource family parent,
45 guardian **[or]**, other person standing in loco parentis or person with

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 supervisory or disciplinary power of any nature or in any capacity
2 over the victim was subjected to, or placed in, reasonable fear of
3 physical or sexual abuse by the other person so as to undermine the
4 person's ability to 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
20 abuse, the **[cause of]** action **[shall accrue at the time of reasonable**
21 **discovery of the injury and its causal relationship to the act of**
22 **sexual abuse. Any such action shall be brought within two years**
23 **after reasonable 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. (C.) (pending**
34 **before the 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
48 probability that its admission will create undue prejudice, confusion

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

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

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

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

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

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

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

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

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

47 f. (1) The name, address, and identity of a victim or a defendant
48 shall not appear on the complaint or any other public record as

1 defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their place initials
2 or a fictitious name shall appear.

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

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

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

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

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

31 (cf: P.L. 2004, c.130, s.10)

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33 3. (New section) Notwithstanding any other provision of law to
34 the contrary, including but not limited to the "New Jersey Tort
35 Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an
36 action for damages brought under the provisions of section 1 of
37 P.L.1992, c.109 (C.2A:61B-1), paragraph (1) of subsection c. of
38 section 1 of P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005,
39 c.264 (C.2A:53A-7.4).

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

45

46 5. (New section) The provisions of this amendatory and
47 supplementary act, P.L. , c. (C.) (pending before the
48 Legislature as this bill), shall apply to any action filed on or after
49 the effective date, including but not limited to matters where the

1 statute of limitations has expired and matters filed with a court that
2 have not yet been dismissed with prejudice or finally adjudicated as
3 of the effective date. The provisions of this act shall also revive
4 any action that was previously dismissed on grounds that the
5 applicable statute of limitations had expired but shall not revive any
6 action previously dismissed on any other grounds or revive any
7 action that has been finally adjudicated.

8
9 6. This act shall take effect immediately.

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12 STATEMENT

13
14 This bill would remove the statute of limitations in civil actions
15 for sexual abuse, expand the category of persons who are
16 potentially liable in these actions, and provide that public entities
17 would be liable in these actions.

18 Currently, N.J.S.A.2A:14-2 provides that personal injury suits
19 must be commenced within two years of accrual of the cause of
20 action, except for certain medical malpractice actions on behalf of
21 minors. Under the bill, this two-year statute of limitations would be
22 removed for actions brought under N.J.S.A.2A:61B-1 (*action*
23 *alleging sexual abuse of a minor*); N.J.S.A.2A:53A-7c.(1) (*action*
24 *alleging a willful, wanton or grossly negligent act of commission or*
25 *omission, including sexual assault or other crime of a sexual*
26 *nature, brought against a trustee, director, officer, employee, agent,*
27 *servant or volunteer of a nonprofit corporation, society or*
28 *association organized exclusively for religious, charitable or*
29 *educational purposes*); and N.J.S.A.2A:53A-7.4 (*action alleging*
30 *sexual offense committed against a minor due to the negligent*
31 *hiring, supervision or retention of an employee, agent or servant of*
32 *a nonprofit corporation, society or association organized*
33 *exclusively for religious, charitable, educational or hospital*
34 *purposes*).

35 It is the view of the sponsor that eliminating the statute of
36 limitations in sexual abuse cases would not only be in the interests
37 of justice, by allowing victims full access to the courts, but would
38 also clarify the courts' complex decisions on statute of limitations
39 matters.

40 For example, in *R.L. v. Voytac*, 199 N.J. 285 (2009), the New
41 Jersey Supreme Court had to determine the application of the
42 statute of limitations in a case where the 26-year-old plaintiff
43 brought suit against his former stepfather for sexual abuse that the
44 plaintiff had suffered from the ages of 10 through 12. The plaintiff
45 alleged that he only discovered the injuries caused by the abuse
46 when he was 24 years old and began therapy.

47 Under N.J.S.A.2A:61B-1, a person must bring suit within two
48 years of "the time of reasonable discovery of the injury and its
49 causal relationship to the act of sexual abuse," and the two-year

1 time period may be “tolled” (paused) because of the “plaintiff’s
2 mental state, duress by the defendant, or any other equitable
3 grounds.”

4 The Appellate Division had held that under the statute a plaintiff
5 “may have a conscious memory of the sexual abuse, but may not
6 have ‘reasonably discovered’ that the serious psychological and
7 mental illness injury from which [he] suffers is caused by that
8 sexual abuse.” R.L. v. Voytac, 402 N.J. Super. 392, 403 (App. Div.
9 2008), rev. by, remanded by R.L. v. Voytac, 199 N.J. 285 (2009).
10 The Supreme Court ruled that under the statute, the trial court must
11 first determine when a “reasonable person subjected to childhood
12 abuse” would discover that the defendant’s conduct caused the
13 person’s injury, and that this determination “is an objective test.”
14 The Supreme Court held that if the period is more than two years
15 prior to the filing of the complaint, then the trial court must next
16 determine whether the statute should be tolled. This second
17 determination “is a subjective test.” The Supreme Court remanded
18 the Voytac case for a hearing in the trial court to determine the
19 accrual date.

20 This bill would eliminate the need for these intricate
21 determinations in future cases by removing the statute of
22 limitations.

23 In addition, the bill makes public entities liable in actions for
24 damages alleging sexual abuse brought pursuant to
25 N.J.S.A.2A:61B-1, N.J.S.A.2A:53A-7c.(1), and N.J.S.A.2A:53A-
26 7.4., notwithstanding the provisions of the “New Jersey Tort Claims
27 Act,” N.J.S.A.59:1-1 et seq., or any other law.

28 The bill also expands the category of persons who are potentially
29 liable in a civil action alleging the sexual abuse of a minor pursuant
30 to N.J.S.A.2A:61B-1. In addition to the person who committed the
31 sexual abuse, current law provides that a parent, resource family
32 parent (i.e., foster parent), guardian or other person standing in loco
33 parentis within the household who knowingly permitted or
34 acquiesced in the sexual abuse is also civilly liable for the abuse. It
35 is currently an affirmative defense if that person was subjected to,
36 or placed in, reasonable fear of physical or sexual abuse by the
37 abuser so as to undermine the person’s ability to protect the child.
38 The bill would provide that a person with supervisory or
39 disciplinary power of any nature or in any capacity over the victim
40 who knowingly permitted or acquiesced in the sexual abuse is
41 civilly liable as well. This person would also be entitled to the
42 same affirmative defense.

43 The bill would apply to any action filed on or after the effective
44 date, including but not limited to matters where the statute of
45 limitations has expired and matters filed with a court that have not
46 yet been dismissed or finally adjudicated as of the effective date.
47 The bill would also revive any action that was previously dismissed
48 on grounds that the applicable statute of limitations had expired but

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- 1 could not revive any action previously dismissed on any other
- 2 grounds or revive any action that has been finally adjudicated.