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SYNOPSIS
Removes statute of limitations in certain civil actions for sexual abuse; expands categories of defendants liable in such actions.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 12/4/2018)
AN ACT concerning certain civil actions alleging sexual abuse,
amending various parts of the statutory law and supplementing
Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

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

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

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

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

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

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

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

1. a. No nonprofit corporation, society or association organized
exclusively for religious, charitable or educational purposes or its
trustees, directors, officers, employees, agents, servants or
volunteers shall, except as is hereinafter set forth, be liable to
respond in damages to any person who shall suffer damage from the
negligence of any agent or servant of such corporation, society or
association, where such person is a beneficiary, to whatever degree,
of the works of such nonprofit corporation, society or association;
provided, however, that such immunity from liability shall not
extend to any person who shall suffer damage from the negligence

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.
of such corporation, society, or association or of its agents or
servants where such person is one unconcerned in and unrelated to
and outside of the benefactions of such corporation, society or
association.

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

b. No nonprofit corporation, society or association organized
exclusively for hospital purposes or its trustees, directors, officers
or volunteers shall, except as is hereinafter set forth, be liable to
respond in damages to any person who shall suffer damage from the
negligence of any agent or servant of such corporation, society or
association, where such person is a beneficiary, to whatever degree,
of the works of such nonprofit corporation, society or association;
provided, however, that such immunity from liability shall not
extend to any person who shall suffer damage from the negligence
of such corporation, society, or association or of its agents or
servants where such person is one unconcerned in and unrelated to
and outside of the benefactions of such corporation, society or
association; but nothing herein contained shall be deemed to exempt
the agent, employee or servant individually from their liability for
any such negligence.

c. Nothing in this section shall be deemed to grant immunity
to: (1) (a) any nonprofit corporation, society or association
organized exclusively for religious, charitable or educational
purposes or its trustee, director, officer, employee, agent, servant or
volunteer causing damage by a willful, wanton or grossly negligent
act of commission or omission, including sexual assault [and], any
other [crimes] crime of a sexual nature or sexual abuse as defined
in section 1 of P.L.1992, c.109 (C.2A:61B-1); (b) any nonprofit corporation, society or association organized
exclusively for religious, charitable or educational purposes causing
damage by any negligent act resulting in the commission of sexual
assault, any other crime of a sexual nature or sexual abuse as
defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); or (c) any trustee, director, officer, employee, agent, servant or
volunteer of a nonprofit corporation, society or association
organized exclusively for religious, charitable or educational
purposes causing damage by any negligent act resulting in the
commission of sexual assault, any other crime of a sexual nature or
sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) if the trustee, director, officer, employee, agent, servant or
volunteer had a supervisory or oversight role over the person
committing the act of sexual assault, other crime of a sexual nature
or sexual abuse as defined in section 1 of P.L.1992, c.109
(C.2A:61B-1);
(2) any trustee, director, officer, employee, agent, servant or
volunteer causing damage as the result of the negligent operation of
a motor vehicle; or
(3) an independent contractor of a nonprofit corporation, society
or association organized exclusively for religious, charitable,
educational or hospital purposes.
(cf: P.L.1995, c.183, s.1)

3. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to
read as follows:
   1. a. As used in this act:
      (1) "Sexual abuse" means an act of sexual contact or sexual
penetration between a child under the age of 18 years and an adult.
A parent, resource family parent, guardian or other person
[standing in loco parentis within the household] who knowingly
permits or acquiesces in sexual abuse by any other person also
commits sexual abuse, except that it is an affirmative defense if the
parent, resource family parent, guardian or other person [standing
in loco parentis] was subjected to, or placed in, reasonable fear of
physical or sexual abuse by the other person so as to undermine the
person's ability to protect the child.
      (2) "Sexual contact" means an intentional touching by the victim
or actor, either directly or through clothing, of the victim's or actor's
intimate parts for the purpose of sexually arousing or sexually
gratifying the actor. Sexual contact of the adult with himself must
be in view of the victim whom the adult knows to be present.
      (3) "Sexual penetration" means vaginal intercourse, cunnilingus,
fellatio or anal intercourse between persons or insertion of the hand,
finger or object into the anus or vagina either by the adult or upon
the adult's instruction.
      (4) "Intimate parts" means the following body parts: sexual
organs, genital area, anal area, inner thigh, groin, buttock or breast
of a person.
      (5) "Injury or illness" includes psychological injury or illness,
whether or not accompanied by physical injury or illness.
   b. In any civil action for damages for injury or illness based on
sexual abuse, the [cause of] action [shall accrue at the time of
reasonable discovery of the injury and its causal relationship to the
act of sexual abuse. Any such action shall be brought within two
years after reasonable discovery] may be commenced at any time.
   c. [Nothing in this act is intended to preclude the court from
finding that the statute of limitations was tolled in a case because of
the plaintiff's mental state, duress by the defendant, or any other
equitable grounds. Such a finding shall be made after a plenary
hearing. At the plenary hearing the court shall hear all credible
evidence and the Rules of Evidence shall not apply, except for Rule
403 or a valid claim of privilege. The court may order an
independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled. [Deleted by amendment, P.L. ___, c. ___ (pending before the Legislature as this bill)]

d. (1) Evidence of the victim’s previous sexual conduct shall not be admitted nor reference made to it in the presence of a jury except as provided in this subsection. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence.

After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

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

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

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

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

(3) A motion seeking closed circuit testimony under paragraph
(1) of this subsection may be filed by:
(a) The victim or the victim's attorney, parent or legal guardian;
(b) The defendant or the defendant's counsel; or
(c) The trial judge on the judge's own motion.

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

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

f. (1) The name, address, and identity of a victim or a
defendant shall not appear on the complaint or any other public
record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their
place initials or a fictitious name shall appear.

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

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

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

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

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

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


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

6. (New section) a. The provisions of this amendatory and supplementary act, P.L.    , c.   (C.      ) (pending before the Legislature as this bill), shall apply to any action filed on or after the effective date, including but not limited to matters where the statute of limitations has expired and matters filed with a court that have not yet been dismissed with prejudice or finally adjudicated as of the effective date.

b. In addition, for a period of two years following the effective date, the provisions of this act shall also revive any action previously filed that was dismissed on grounds that the applicable statute of limitations had expired, but shall not revive any action previously dismissed on any other grounds or revive any action that has been finally adjudicated.

7. This act shall take effect immediately.

STATEMENT

This bill would eliminate the statute of limitations in civil actions for sexual abuse, expand the categories of defendants who are potentially liable in these actions, and codify the liability of public entities in these actions.

Statute of Limitations: Currently, N.J.S.2A:14-2 provides that personal injury suits must be commenced within two years of accrual of the cause of action, except for certain medical malpractice actions on behalf of minors. Under the bill, this two-year statute of limitations would be eliminated for actions brought under P.L.1992, c.109, s.1 (C.2A:61B-1) (sexual abuse of a child); paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7) (willful, wanton or grossly negligent act of commission or
omission, including sexual assault or other crime of a sexual nature,
brought against a trustee, director, officer, employee, agent, servant
or volunteer of a nonprofit corporation, society or association
organized exclusively for religious, charitable or educational
purposes); and P.L.2005, c.264, s.1 (C.2A:53A-7.4) (sexual offense
committed against a minor due to the negligent hiring, supervision
or retention of an employee, agent or servant of a nonprofit
corporation, society or association organized exclusively for
religious, charitable, educational or hospital purposes).

CHARITABLE IMMUNITY ACT: WILFUL, WANTON, AND GROSSLY
NEGLECTFUL ACTS BY TRUSTEES, EMPLOYEES AND OTHER
INDIVIDUALS. Under current law, P.L.1959, c.90, s.1 (C.2A:53A-7),
part of the Charitable Immunity Act, the trustees, directors,
officers, employees, agents, servants or volunteers of nonprofit
corporations, societies or associations organized for religious,
charitable, or educational purposes are liable for willful, wanton, or
grossly negligent acts including sexual assault or other crimes of a
sexual nature. The bill would expand this liability to include sexual
abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (See
subparagraph (a) of paragraph (1) of subsection c. of P.L.1959,
c.90, s.1 (C.2A:53A-7))

CHARITABLE IMMUNITY ACT: WILFUL, WANTON, AND GROSSLY
NEGLECTFUL ACTS BY ORGANIZATIONS. The bill amends the
Charitable Immunity Act to provide that the organizations would
also be liable for any willful, wanton, or grossly negligent act
resulting in the commission of various crimes of a sexual nature or
sexual abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (See
subparagraph (a) of paragraph (1) of subsection c. of P.L.1959,
c.90, s.1 (C.2A:53A-7))

CHARITABLE IMMUNITY ACT: NEGLECTFUL ACTS BY TRUSTEES,
EMPLOYEES AND OTHER INDIVIDUALS. The bill would impose
liability for individuals’ negligence under certain circumstances.
Under the bill, any trustee, director, officer, employee, agent,
servant or volunteer of a nonprofit corporation, society or
association organized exclusively for religious, charitable or
educational purposes causing damage by any negligent act resulting
in the commission of sexual assault, any other crime of a sexual
nature or sexual abuse as defined in P.L.1992, c.109, s.1
(C.2A:61B-1) would be liable if that person had a supervisory or
oversight role over the person committing the act of sexual assault,
other crime of a sexual nature or sexual abuse as defined in
P.L.1992, c.109, s.1 (C.2A:61B-1). (See subparagraph (c) of
paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

CHARITABLE IMMUNITY ACT: NEGLECTFUL ACTS BY
ORGANIZATIONS. Under the bill, organizations would also be liable
for any negligent act that results in the commission of sexual
assault, the commission of any other crime of a sexual nature or
sexual abuse. (See subparagraph (b) of paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

CHILD SEXUAL ABUSE ACT - LIABILITY FOR ACQUIESCENCE: The bill would expand the category of persons who are potentially liable in any civil action alleging the sexual abuse of a child brought pursuant to P.L.1992, c.109, s.1 (C.2A:61B-1). Under current law, in addition to the person who committed the sexual abuse, a parent, resource family parent (i.e., foster parent), guardian or other person standing in loco parentis within the household who knowingly permitted or acquiesced in the sexual abuse is also civilly liable for the abuse. The bill provides that any person who knowingly permitted or acquiesced in the sexual abuse would be civilly liable.

PUBLIC ENTITIES: The bill provides that, notwithstanding the provisions of the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., or any other law, public entities would be liable in actions for damages alleging the sexual abuse of a child brought pursuant to P.L.1992, c.109, s.1 (C.2A:61B-1), paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7) or P.L.2005, c.264, s.1 (C.2A:53A-7.4).

EFFECTIVE DATE: The bill would apply to any action filed on or after the effective date, including but not limited to matters where the statute of limitations has expired and matters filed with a court that have not yet been dismissed or finally adjudicated as of the effective date.

The bill would revive any action that was previously dismissed on grounds that the applicable statute of limitations had expired for a period of two years following the effective date.

The bill would not revive any action previously dismissed on grounds other than the statute of limitations or revive any action that has been finally adjudicated.