

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 477

STATE OF NEW JERSEY
218th LEGISLATURE

ADOPTED MARCH 7, 2019

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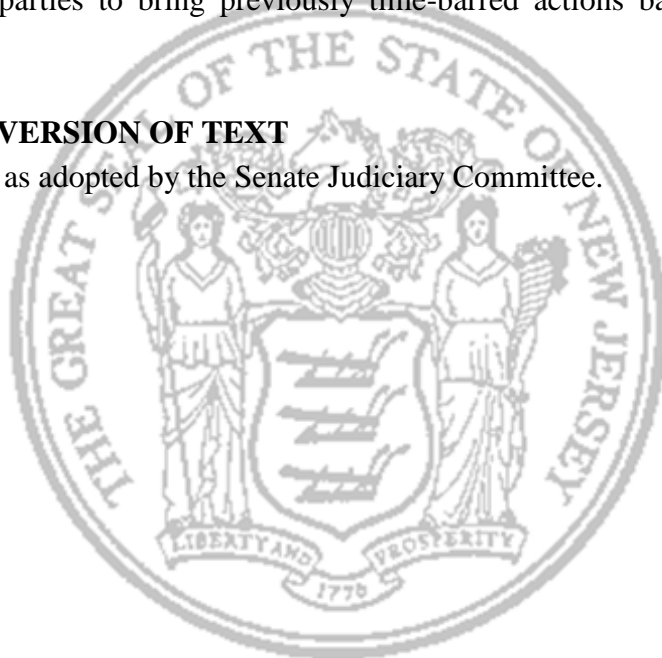
**Senators Weinberg, Cryan, Codey, Cunningham, Diegnan, Gill, Gopal,
Greenstein, Lagana, O'Scanlon, Rice, Ruiz, B.Smith, Stack and Turner**

SYNOPSIS

Extends statute of limitations in civil actions for sexual abuse claims; expands categories of potential defendants in civil actions; creates two-year window for parties to bring previously time-barred actions based on sexual abuse.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Judiciary Committee.



1 AN ACT concerning certain civil actions, and amending and
2 supplementing various parts of the statutory law.

3

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

6

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

8 2A:14-2. a. **【Every】** Except as otherwise provided by law,
9 every action at law for an injury to the person caused by the
10 wrongful act, neglect or default of any person within this State shall
11 be commenced within two years next after the cause of any such
12 action shall have accrued; except that an action by or on behalf of a
13 minor that has accrued for medical malpractice for injuries
14 sustained at birth shall be commenced prior to the minor's 13th
15 birthday.

16 b. In the event that an action by or on behalf of a minor that has
17 accrued for medical malpractice for injuries sustained at birth is not
18 commenced by the minor's parent or guardian prior to the minor's
19 12th birthday, the minor or a person 18 years of age or older
20 designated by the minor to act on the minor's behalf may commence
21 such an action. For this purpose, the minor or designated person
22 may petition the court for the appointment of a guardian ad litem to
23 act on the minor's behalf.

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

25

26 2. (New section) a. (1) Every action at law for an injury
27 resulting from the commission of sexual assault, any other crime of
28 a sexual nature, a prohibited sexual act as defined in section 2 of
29 P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1
30 of P.L.1992, c.109 (C.2A:61B-1) against a minor under the age of
31 18 that occurred prior to, on or after the effective date of P.L. , c.
32 (C.) (pending before the Legislature as this bill) shall be
33 commenced within 37 years after the minor reaches the age of
34 majority, or within seven years from the date of reasonable
35 discovery of the injury and its causal relationship to the act,
36 whichever date is later.

37 (2) To the extent applicable, any action for an injury that
38 occurred prior to the effective date of P.L. , c. (C.) (pending
39 before the Legislature as this bill) shall be subject to the provisions
40 of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and
41 P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c.
42 (C.) (pending before the Legislature as this bill).

43 b. (1) Every action at law for an injury resulting from the
44 commission of sexual assault or any other crime of a sexual nature
45 against a person 18 years of age or older that occurred prior to, on

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 or after the effective date of P.L. , c. (C.) (pending before
2 the Legislature as this bill) shall be commenced within seven years
3 from the date of reasonable discovery of the injury and its causal
4 relationship to the act.

5 (2) To the extent applicable, any action for an injury that
6 occurred prior to the effective date of P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall be subject to the provisions
8 of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7), as
9 amended by P.L. , c. (C.) (pending before the Legislature as
10 this bill).

11 Nothing in this section is intended to preclude the court from
12 finding that the statute of limitations was tolled in an action because
13 of the plaintiff's mental state, physical or mental disability, duress
14 by the defendant, or any other equitable grounds. Such a finding
15 shall be made after a plenary hearing. The court may order an
16 independent psychiatric evaluation of the plaintiff in order to assist
17 in the determination as to whether the statute of limitations was
18 tolled.

19 c. (1) Every action at law for an injury that is commenced
20 pursuant to this section shall proceed on an individual basis, and not
21 proceed on behalf of a class in a class action, due to the particular
22 circumstances, source of injury and its discovery, and damages
23 relating to each occurrence or occurrences of sexual assault, any
24 other crime of a sexual nature, a prohibited sexual act as defined in
25 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined
26 in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor
27 under the age of 18 or a person 18 years of age or older.

28 (2) Any private, contractual arrangement intending to settle
29 claims for occurrences described in paragraph (1) of this subsection
30 on a class basis is against public policy and shall be void and
31 unenforceable.

32

33 3. Section 6 of P.L.1992, c.7 (C.2A:30B-6) is amended to read
34 as follows:

35 6. **【Every】** In any action 【brought pursuant to this act】 for
36 injury based on P.L.1992, c.7 (C.2A:30B-1 et seq.), the cause of
37 action shall 【be commenced within two years after the child
38 reaches the age of majority】 accrue at the time of reasonable
39 discovery of the injury and its causal relationship to the act. The
40 action shall be subject to the statute of limitations set forth in
41 section 2 of P.L. , c. (C.) (pending before the Legislature as
42 this bill).

43 (cf: P.L.1992, c.7, s.6)

44

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

47 1. a. As used in this act:

1 (1) "Sexual abuse" means an act of sexual contact or sexual
2 penetration between a child under the age of 18 years and an adult.
3 A parent, resource family parent, guardian or other person standing
4 in loco parentis **[within the household]** who knowingly permits or
5 acquiesces in sexual abuse by any other person also commits sexual
6 abuse, except that it is an affirmative defense if the parent, resource
7 family parent, guardian or other person standing in loco parentis
8 was subjected to, or placed in, reasonable fear of physical or sexual
9 abuse by the other person so as to undermine the person's ability to
10 protect the child.

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

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

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

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

25 b. In any civil action for injury or illness based on sexual
26 abuse, the cause of action shall accrue at the time of reasonable
27 discovery of the injury and its causal relationship to the act of
28 sexual abuse. Any such action shall be **[brought within two years**
29 **after reasonable discovery]** subject to the statute of limitations set
30 forth in section 2 of P.L. , c. (C.) (pending before the
31 Legislature as this bill).

32 c. **[Nothing in this act is intended to preclude the court from**
33 **finding that the statute of limitations was tolled in a case because of**
34 **the plaintiff's mental state, duress by the defendant, or any other**
35 **equitable grounds. Such a finding shall be made after a plenary**
36 **hearing. At the plenary hearing the court shall hear all credible**
37 **evidence and the Rules of Evidence shall not apply, except for Rule**
38 **403 or a valid claim of privilege. The court may order an**
39 **independent psychiatric evaluation of the plaintiff in order to assist**
40 **in the determination as to whether the statute of limitations was**
41 **tolled.]** (Deleted by amendment, P.L. , c.) (pending before the
42 Legislature as this bill)

43 d. (1) Evidence of the victim's previous sexual conduct shall
44 not be admitted nor reference made to it in the presence of a jury
45 except as provided in this subsection. When the defendant seeks to
46 admit such evidence for any purpose, the defendant must apply for
47 an order of the court before the trial or preliminary hearing, except

1 that the court may allow the motion to be made during trial if the
2 court determines that the evidence is newly discovered and could
3 not have been obtained earlier through the exercise of due diligence.
4 After the application is made, the court shall conduct a hearing in
5 camera to determine the admissibility of the evidence. If the court
6 finds that evidence offered by the defendant regarding the sexual
7 conduct of the victim is relevant and that the probative value of the
8 evidence offered is not outweighed by its collateral nature or by the
9 probability that its admission will create undue prejudice, confusion
10 of the issues, or unwarranted invasion of the privacy of the victim,
11 the court shall enter an order setting forth with specificity what
12 evidence may be introduced and the nature of the questions which
13 shall be permitted, and the reasons why the court finds that such
14 evidence satisfies the standards contained in this section. The
15 defendant may then offer evidence under the order of the court.

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

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

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

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

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

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

46 (4) The defendant's counsel shall be present at the taking of
47 testimony in camera. If the defendant is not present, he and his

1 attorney shall be able to confer privately with each other during the
2 testimony by a separate audio system.

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

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

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

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

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

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

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

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

42

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

45 1. a. No nonprofit corporation, society or association
46 organized exclusively for religious, charitable or educational
47 purposes or its trustees, directors, officers, employees, agents,
48 servants or volunteers shall, except as is hereinafter set forth, be

1 liable to respond in damages to any person who shall suffer damage
2 from the negligence of any agent or servant of such corporation,
3 society or association, where such person is a beneficiary, to
4 whatever degree, of the works of such nonprofit corporation,
5 society or association; provided, however, that such immunity from
6 liability shall not extend to any person who shall suffer damage
7 from the negligence of such corporation, society, or association or
8 of its agents or servants where such person is one unconcerned in
9 and unrelated to and outside of the benefactions of such
10 corporation, society or association.

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

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

31 c. Nothing in this section shall be deemed to grant immunity
32 to: (1) any nonprofit corporation, society or association organized
33 exclusively for religious, charitable, educational or hospital
34 purposes, or its trustee, director, officer, employee, agent, servant or
35 volunteer, causing damage by a willful, wanton or grossly negligent
36 act of commission or omission, including sexual assault **[and]** , any
37 other [crimes] crime of a sexual nature, a prohibited sexual act as
38 defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse
39 as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); (2) any
40 trustee, director, officer, employee, agent, servant or volunteer
41 causing damage as the result of the negligent operation of a motor
42 vehicle; or (3) an independent contractor of a nonprofit corporation,
43 society or association organized exclusively for religious,
44 charitable, educational or hospital purposes.

45 (cf: P.L.1995, c.183, s.1)

46

47 6. Section 2 of P.L.2005, c.264 (C.2A:53A-7.5) is amended to
48 read as follows:

1 2. a. The provisions of this supplementary act, P.L.2005, c.264
2 (C.2A:53A-7.4 et seq.), shall apply prospectively and also shall be
3 applicable to all civil actions for which the statute of limitations has
4 not expired as of the effective date of this act, and subsequently, not
5 expired as of the effective date of P.L. , c. (C.) (pending
6 before the Legislature as this bill), including the **【**statutes of
7 **limitation】** statute of limitations set forth in N.J.S.2A:14-2, section
8 2 of P.L. , c. (C.) (pending before the Legislature as this
9 bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), **【**section 1 of
10 P.L.1992, c.109 (C.2A:61B-1)**】** or any other statute. These
11 applicable actions include but are not limited to matters filed with a
12 court that have not yet been dismissed or finally adjudicated as of
13 the effective date of this act or P.L. , c. (C.) (pending before
14 the Legislature as this bill).

15 b. Notwithstanding the provisions of subsection a. of this
16 section, the provisions of P.L.2005, c.264 (C.2A:53A-7.4 et seq.)
17 shall apply to all civil actions for an injury resulting from an act
18 that occurred prior to the effective date of P.L. , c. (C.)
19 (pending before the Legislature as this bill), and these actions shall
20 be subject to the statute of limitations set forth in section 2 of
21 P.L. , c. (C.) (pending before the Legislature as this bill).
22 (cf: P.L.2005, c.264, s.2)

23
24 7. (New section) Notwithstanding any other provision of law
25 to the contrary, including but not limited to the "New Jersey Tort
26 Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an
27 action at law for an injury resulting from the commission of sexual
28 assault, any other crime of a sexual nature, a prohibited sexual act
29 as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual
30 abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1).

31
32 8. N.J.S.59:8-3 is amended to read as follows:

33 59:8-3. Claims for damages against public entities. **【No】** a.
34 Except as otherwise provided in this section, no action shall be
35 brought against a public entity or public employee under this act
36 unless the claim upon which it is based shall have been presented in
37 accordance with the procedure set forth in this chapter.

38 b. The procedural requirements of this chapter shall not apply
39 to an action at law for an injury resulting from the commission of
40 sexual assault, any other crime of a sexual nature, a prohibited
41 sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or
42 sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-
43 1).

44 (cf: P.L.1994, c.49, s.2)

45
46 9. (New section) a. Notwithstanding the statute of limitations
47 provisions of N.J.S.2A:14-2, section 2 of P.L. , c. (C.)

1 (pending before the Legislature as this bill), section 1 of P.L.1964,
2 c.214 (C.2A:14-2.1), or any other statute, an action at law for an
3 injury resulting from the commission of sexual assault, any other
4 crime of a sexual nature, a prohibited sexual act as defined in
5 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined
6 in section 1 of P.L.1992, c.109 (C.2A:61B-1), that occurred prior to
7 the effective date of P.L. , c. (C.) (pending before the
8 Legislature as this bill), and which action would otherwise be
9 barred through application of the statute of limitations, may be
10 commenced within two years immediately following the effective
11 date.

12 b. To the extent applicable, any action brought during the two-
13 year period pursuant to subsection a. of this section shall be subject
14 to the provisions of subsection c. of section 1 of P.L.1959, c.90
15 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as
16 amended by P.L. , c. (C.) (pending before the Legislature as
17 this bill).

18 c. (1) Every action at law for an injury that is commenced
19 pursuant to this section shall proceed on an individual basis, and not
20 proceed on behalf of a class in a class action, due to the particular
21 circumstances, source of injury and its discovery, and damages
22 relating to each occurrence or occurrences of sexual assault, any
23 other crime of a sexual nature, a prohibited sexual act as defined in
24 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined
25 in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor
26 under the age of 18 or a person 18 years of age or older.

27 (2) Any private, contractual arrangement intending to settle
28 claims for occurrences described in paragraph (1) of this subsection
29 on a class basis is against public policy and shall be void and
30 unenforceable.

31

32 10. (New section) The provisions of this amendatory and
33 supplementary act, P.L. , c. (C.) (pending before the
34 Legislature as this bill), shall take effect on December 1, 2019.
35 These provisions shall be inapplicable to any civil action governed
36 solely by the statute of limitations of another jurisdiction.