

ASSEMBLY, No. 2522

STATE OF NEW JERSEY

INTRODUCED DECEMBER 5, 1996

By Assemblymen GIBSON, ASSELTA
and Assemblywoman Crecco

1 **AN ACT** concerning procedures in civil actions alleging sexual abuse
2 and amending P.L.1992, c.109.

3

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

6

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

9 1. a. As used in this act:

10 (1) "Sexual abuse" means an act of sexual contact or sexual
11 penetration between a child under the age of 18 years and an adult. A
12 parent, foster parent, guardian or other person standing in loco
13 parentis within the household who knowingly permits or acquiesces in
14 sexual abuse by any other person also commits sexual abuse, except
15 that it is an affirmative defense if the parent, foster parent, guardian or
16 other person standing in loco parentis was subjected to, or placed in,
17 reasonable fear of physical or sexual abuse by the other person so as
18 to undermine the person's ability to protect the child.

19 (2) "Sexual contact" means an intentional touching by the victim
20 or actor, either directly or through clothing, of the victim's or actor's
21 intimate parts for the purpose of sexually arousing or sexually
22 gratifying the actor. Sexual contact of the adult with himself must be
23 in view of the victim whom the adult knows to be present;

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

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

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

33 b. In any civil action for injury or illness based on sexual abuse, the

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

Matter underlined thus is new matter.

1 cause of action shall accrue at the time of reasonable discovery of the
2 injury and its causal relationship to the act of sexual abuse. Any such
3 action shall be brought within two years after reasonable discovery.

4 c. Nothing in this act is intended to preclude the court from finding
5 that the statute of limitations was tolled in a case because of the
6 plaintiff's mental state, duress by the defendant, or any other equitable
7 grounds. Such a finding shall be made after a plenary hearing[,
8 conducted in the presence of the jury]. At the plenary hearing the
9 court shall hear all credible evidence and the Rules of Evidence shall
10 not apply, except for [Rule 4] Rule 403 or a valid claim of privilege.
11 The court may order an independent psychiatric evaluation of the
12 plaintiff in order to assist in the determination as to whether the statute
13 of limitations was tolled.

14 d. (1) Evidence of the victim's previous sexual conduct shall not
15 be admitted nor reference made to it in the presence of a jury except
16 as provided in this subsection. When the defendant seeks to admit
17 such evidence for any purpose, the defendant must apply for an order
18 of the court before the trial or preliminary hearing, except that the
19 court may allow the motion to be made during trial if the court
20 determines that the evidence is newly discovered and could not have
21 been obtained earlier through the exercise of due diligence. After the
22 application is made, the court shall conduct a hearing in camera to
23 determine the admissibility of the evidence. If the court finds that
24 evidence offered by the defendant regarding the sexual conduct of the
25 victim is relevant and that the probative value of the evidence offered
26 is not outweighed by its collateral nature or by the probability that its
27 admission will create undue prejudice, confusion of the issues, or
28 unwarranted invasion of the privacy of the victim, the court shall enter
29 an order setting forth with specificity what evidence may be introduced
30 and the nature of the questions which shall be permitted, and the
31 reasons why the court finds that such evidence satisfies the standards
32 contained in this section. The defendant may then offer evidence
33 under the order of the court.

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

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

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

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

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

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

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

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

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

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

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

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

45 g. In accordance with R.5:3-2 of the Rules Governing the Courts
46 of the State of New Jersey, the court may, on its own or a party's

1 motion, direct that any proceeding or portion of a proceeding
2 involving a victim sixteen years of age or younger be conducted in
3 camera.

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

12 (cf: P.L.1992, c.109.)

13

14 2. This act shall take effect immediately.

15

16

17 STATEMENT

18

19 N.J.S.A.2A:61B-1 sets forth the procedures to be followed in civil
20 actions for injury or illness based on sexual abuse. In T.S.R. v. J.C.,
21 288 N.J. Super 48 (App. Div. 1996), the Appellate Division suggested
22 that the language of 2A:61B-1 was unclear with regard to whether
23 issues concerning the tolling of the statute of limitations in civil actions
24 involving sexual abuse should be decided by the court or by a jury.
25 Noting that under present New Jersey law, questions concerning the
26 tolling of statute of limitations were normally determined by the court
27 in a pretrial hearing, the Appellate Division in T.S.R. interpreted
28 N.J.S.2A:61B-1 to require a similar procedure in actions involving
29 sexual abuse. In order to codify the Appellate Division decision in
30 T.S.R., this bill would delete the language from 2A:61B-1 which
31 seemed to suggest that a jury should decide "tolling" questions in cases
32 alleging sexual abuse.

33

34

35

36

37 Clarifies procedures in civil actions alleging sexual abuse.