

SENATE, No. 1433

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED OCTOBER 19, 1998

Sponsored by:

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

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District 7 (Burlington and Camden)

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SYNOPSIS

Clarifies procedures in civil actions alleging sexual abuse.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/1/1999)

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 organs,
29 genital area, anal area, inner thigh, groin, buttock or breast of a
30 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
34 cause of action shall accrue at the time of reasonable discovery of the
35 injury and its causal relationship to the act of sexual abuse. Any such
36 action shall be brought within two years after reasonable discovery.

37 c. Nothing in this act is intended to preclude the court from finding
38 that the statute of limitations was tolled in a case because of the
39 plaintiff's mental state, duress by the defendant, or any other equitable
40 grounds. Such a finding shall be made after a plenary hearing**【**,
41 conducted in the presence of the jury**】**. At the plenary hearing the
42 court shall hear all credible evidence and the Rules of Evidence shall
43 not apply, except for**【**Rule 4**】** Rule 403 or a valid claim of privilege.

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 The court may order an independent psychiatric evaluation of the
2 plaintiff in order to assist in the determination as to whether the statute
3 of limitations was tolled.

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

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

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

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

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

1 specific findings relating to the impact of the presence of each.

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

4 (a) The victim or the victim's attorney, parent or legal guardian;

5 (b) The defendant or the defendant's counsel; or

6 (c) The trial judge on the judge's own motion.

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

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

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

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

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

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

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

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

1 enjoyment of life, costs of counseling, and lost wages.
2 (cf: P.L.1992, c.109.)

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4 2. This act shall take effect immediately.

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STATEMENT

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9 N.J.S.A.2A:61B-1 sets forth the procedures to be followed in civil
10 actions for injury or illness based on sexual abuse. In T.S.R. v. J.C.,
11 288 N.J.Super. 48 (App. Div. 1996), the Appellate Division suggested
12 that the language of 2A:61B-1 was unclear with regard to whether
13 issues concerning the tolling of the statute of limitations in civil actions
14 involving sexual abuse should be decided by the court or by a jury.
15 Noting that under present New Jersey law, questions concerning the
16 tolling of statute of limitations were normally determined by the court
17 in a pretrial hearing, the Appellate Division in T.S.R. interpreted
18 N.J.S.2A:61B-1 to require a similar procedure in actions involving
19 sexual abuse. In order to codify the Appellate Division decision in
20 T.S.R., this bill would delete the language from 2A:61B-1 which
21 seems to suggest that a jury should decide "tolling" questions in cases
22 alleging sexual abuse.