

SENATE, No. 477

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

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District 22 (Middlesex, Somerset and Union)

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

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)

1 AN ACT concerning certain civil actions alleging sexual abuse,
2 amending various parts of the statutory law and supplementing
3 Title 2A 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.1959, c.90 (C.2A:53A-7) is amended to
35 read as follows:

36 1. a. No nonprofit corporation, society or association organized
37 exclusively for religious, charitable or educational purposes or its
38 trustees, directors, officers, employees, agents, servants or
39 volunteers shall, except as is hereinafter set forth, be liable to
40 respond in damages to any person who shall suffer damage from the
41 negligence of any agent or servant of such corporation, society or
42 association, where such person is a beneficiary, to whatever degree,
43 of the works of such nonprofit corporation, society or association;
44 provided, however, that such immunity from liability shall not
45 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.

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

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

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

25 c. Nothing in this section shall be deemed to grant immunity
26 to: (1) (a) any nonprofit corporation, society or association
27 organized exclusively for religious, charitable or educational
28 purposes or its trustee, director, officer, employee, agent, servant or
29 volunteer causing damage by a willful, wanton or grossly negligent
30 act of commission or omission, including sexual assault [and] , any
31 other [crimes] crime of a sexual nature or sexual abuse as defined
32 in section 1 of P.L.1992, c.109 (C.2A:61B-1);

33 (b) any nonprofit corporation, society or association organized
34 exclusively for religious, charitable or educational purposes causing
35 damage by any negligent act resulting in the commission of sexual
36 assault, any other crime of a sexual nature or sexual abuse as
37 defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); or

38 (c) any trustee, director, officer, employee, agent, servant or
39 volunteer of a nonprofit corporation, society or association
40 organized exclusively for religious, charitable or educational
41 purposes causing damage by any negligent act resulting in the
42 commission of sexual assault, any other crime of a sexual nature or
43 sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-
44 1) if the trustee, director, officer, employee, agent, servant or
45 volunteer had a supervisory or oversight role over the person
46 committing the act of sexual assault, other crime of a sexual nature
47 or sexual abuse as defined in section 1 of P.L.1992, c.109
48 (C.2A:61B-1);

1 (2) any trustee, director, officer, employee, agent, servant or
2 volunteer causing damage as the result of the negligent operation of
3 a motor vehicle; or

4 (3) an independent contractor of a nonprofit corporation, society
5 or association organized exclusively for religious, charitable,
6 educational or hospital purposes.

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

8

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

11 1. a. As used in this act:

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

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

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

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

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

36 b. In any civil action for damages for injury or illness based on
37 sexual abuse, the **【cause of】** action **【shall accrue at the time of**
38 **reasonable discovery of the injury and its causal relationship to the**
39 **act of sexual abuse. Any such action shall be brought within two**
40 **years after reasonable discovery】** may be commenced at any time.

41 c. **【Nothing in this act is intended to preclude the court from**
42 **finding that the statute of limitations was tolled in a case because of**
43 **the plaintiff's mental state, duress by the defendant, or any other**
44 **equitable grounds. Such a finding shall be made after a plenary**
45 **hearing. At the plenary hearing the court shall hear all credible**
46 **evidence and the Rules of Evidence shall not apply, except for Rule**
47 **403 or a valid claim of privilege. The court may order an**

1 independent psychiatric evaluation of the plaintiff in order to assist
2 in the determination as to whether the statute of limitations was
3 tolled.] Deleted by amendment, P.L. , c. (pending before the
4 Legislature as this bill)

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

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

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

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

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

1 shall be based on specific findings relating to the impact of the
2 presence of each.

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

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

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

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

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

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

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

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

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

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

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

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

1 childhood, diminished enjoyment of life, costs of counseling, and
2 lost wages.

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

4

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

12

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

17

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

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

31

32 7. This act shall take effect immediately.

33

34

35

STATEMENT

36

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

41 STATUTE OF LIMITATIONS: Currently, N.J.S.2A:14-2 provides that
42 personal injury suits must be commenced within two years of
43 accrual of the cause of action, except for certain medical
44 malpractice actions on behalf of minors. Under the bill, this two-
45 year statute of limitations would be eliminated for actions brought
46 under P.L.1992, c.109, s.1 (C.2A:61B-1) (sexual abuse of a child);
47 paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7)
48 (willful, wanton or grossly negligent act of commission or

1 omission, including sexual assault or other crime of a sexual nature,
2 brought against a trustee, director, officer, employee, agent, servant
3 or volunteer of a nonprofit corporation, society or association
4 organized exclusively for religious, charitable or educational
5 purposes); and P.L.2005, c.264, s.1 (C.2A:53A-7.4) (sexual offense
6 committed against a minor due to the negligent hiring, supervision
7 or retention of an employee, agent or servant of a nonprofit
8 corporation, society or association organized exclusively for
9 religious, charitable, educational or hospital purposes).

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

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

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

44 CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY
45 ORGANIZATIONS. Under the bill, organizations would also be liable
46 for any negligent act that results in the commission of sexual
47 assault, the commission of any other crime of a sexual nature or

1 sexual abuse. (See subparagraph (b) of paragraph (1) of subsection
2 c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

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

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

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

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

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