

2568

2009-2010 Regular Sessions

I N S E N A T E

February 24, 2009

Introduced by Sens. DUANE, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the timeliness of prosecutions for certain sex offenses; and to amend the civil practice law and rules, in relation to the timeliness for commencing certain civil actions related to sex offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (f) of subdivision 3 of section 30.10 of the
2 criminal procedure law, as separately amended by chapters 3 and 320 of
3 the laws of 2006, is amended to read as follows:

4 (f) For purposes of a prosecution involving a sexual offense as
5 defined in article one hundred thirty of the penal law, other than a
6 sexual offense delineated in paragraph (a) of subdivision two of this
7 section, committed against a child less than eighteen years of age,
8 incest in the first, second or third degree as defined in sections
9 255.27, 255.26 and 255.25 of the penal law committed against a child
10 less than eighteen years of age, or use of a child in a sexual perform-
11 ance as defined in section 263.05 of the penal law, the period of limi-
12 tation shall not begin to run until the child has reached the age of
13 [eighteen] TWENTY-THREE or the offense is reported to a law enforcement
14 agency or statewide central register of child abuse and maltreatment,
15 whichever occurs earlier.

16 S 2. The opening paragraph of section 208 of the civil practice law
17 and rules is designated subdivision (a) and a new subdivision (b) is
18 added to read as follows:

19 (B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION,
20 WITH RESPECT TO ALL CIVIL CLAIMS OR CAUSES OF ACTION BROUGHT BY ANY
21 PERSON FOR PHYSICAL, PSYCHOLOGICAL OR OTHER INJURY OR CONDITION SUFFERED
22 AS A RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS
23 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST
24 A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION
25 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS
26 THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORM-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR
2 STATUTE THAT PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH
3 CONDUCT WAS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE,
4 THE TIME WITHIN WHICH THE ACTION MUST BE COMMENCED SHALL BE EXTENDED TO
5 FIVE YEARS AFTER THE PERSON REACHES THE AGE OF TWENTY-THREE YEARS.

6 S 3. The civil practice law and rules is amended by adding a new
7 section 3012-b to read as follows:

8 S 3012-B. CERTAIN CHILD SEXUAL ABUSE CASES; CERTIFICATE OF MERIT. (A)
9 NOTWITHSTANDING ANY PROVISION OF LAW WHICH IMPOSES A PERIOD OF LIMITA-
10 TION TO THE CONTRARY, EVERY CIVIL CLAIM OR CAUSE OF ACTION BROUGHT BY A
11 PERSON FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION
12 SUFFERED AS A RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE
13 AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED
14 AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN
15 SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A
16 CHILD LESS THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL
17 PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, OR A PREDE-
18 CESSOR STATUTE THAT PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT,
19 WHICH CONDUCT WAS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF
20 AGE, WHICH IS BARRED AS OF THE EFFECTIVE DATE OF THIS SECTION BECAUSE
21 THE APPLICABLE PERIOD OF LIMITATION HAS EXPIRED IS HEREBY REVIVED, AND
22 ACTION THEREON MAY BE COMMENCED PROVIDED THAT SUCH ACTION IS COMMENCED
23 WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS SECTION.

24 (B) IN ANY ACTION BROUGHT PURSUANT TO SUBDIVISION (A) OF THIS SECTION
25 FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A
26 RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DESCRIBED
27 IN SUBDIVISION (A) OF THIS SECTION, THE COMPLAINT SHALL BE ACCOMPANIED
28 BY A CERTIFICATE OF MERIT AS DESCRIBED IN SUBDIVISION (C) OF THIS
29 SECTION.

30 (C) A CERTIFICATE OF MERIT FILED PURSUANT TO SUBDIVISION (B) OF THIS
31 SECTION SHALL BE FILED BY THE ATTORNEY FOR THE PLAINTIFF AND SHALL
32 CONTAIN A NOTARIZED STATEMENT BY A QUALIFIED PSYCHIATRIST, AS DEFINED IN
33 SECTION 9.01 OF THE MENTAL HYGIENE LAW, A PSYCHOLOGIST AS LICENSED
34 PURSUANT TO ARTICLE ONE HUNDRED FIFTY-THREE OF THE EDUCATION LAW, OR A
35 PERSON IN THE PRACTICE OF MENTAL HEALTH COUNSELING, AS DEFINED IN SUBDI-
36 VISION ONE OF SECTION EIGHTY-FOUR HUNDRED TWO OF THE EDUCATION LAW, WHO
37 IS KNOWLEDGEABLE IN THE RELEVANT FACTS AND ISSUES INVOLVED IN THE
38 PARTICULAR ACTION, AND STATES IN REASONABLE DETAIL THE FACTS AND OPIN-
39 IONS THAT THE PERSON HAS RELIED UPON FOR CONCLUDING THAT THERE IS A
40 REASONABLE BASIS TO BELIEVE THAT THE PLAINTIFF HAS BEEN SUBJECT TO ONE
41 OR MORE ACTS OF CHILD SEXUAL ABUSE OF THE TYPE DESCRIBED IN SUBDIVISION
42 (A) OF THIS SECTION. THE PERSON PROVIDING SUCH STATEMENT MAY NOT BE A
43 PARTY TO THE LITIGATION.

44 (D) WHERE A CERTIFICATE IS REQUIRED PURSUANT TO THIS SECTION, A SINGLE
45 CERTIFICATE SHALL BE FILED FOR EACH ACTION, EVEN IF MORE THAN ONE
46 DEFENDANT HAS BEEN NAMED IN THE COMPLAINT OR IS SUBSEQUENTLY NAMED.

47 S 4. The provisions of this act shall be severable, and if any clause,
48 sentence, paragraph, subdivision or part of this act shall be adjudged
49 by any court of competent jurisdiction to be invalid, such judgment
50 shall not affect, impair, or invalidate the remainder thereof, but shall
51 be confined in its operation to the clause, sentence, paragraph, subdi-
52 vision or part thereof directly involved in the controversy in which
53 such judgment shall have been rendered.

54 S 5. This act shall take effect immediately, provided that section
55 three of this act shall take effect on the sixtieth day after this act
56 shall have become a law.