S T A T E O F N E W Y O R K

7793

I N S E N A T E

May 12, 2010

Introduced by Sen. DUANE -- 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:

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

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

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

(B) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION, WITH RESPECT TO ALL CIVIL CLAIMS OR CAUSES OF ACTION BROUGHT BY ANY PERSON FOR PHYSICAL, PSYCHOLOGICAL OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS 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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ANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR STATUTE THAT PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH CONDUCT WAS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, THE TIME WITHIN WHICH THE ACTION MUST BE COMMENCED SHALL BE EXTENDED TO FIVE YEARS AFTER THE PERSON REACHES THE AGE OF TWENTY-THREE YEARS.

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

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

(A-1) ANY CIVIL CLAIM OR CAUSE OF ACTION BROUGHT PURSUANT TO SUBDIVISION (A) OF THIS SECTION MAY ONLY BE COMMENCED FOR CONDUCT COMMITTED AGAINST SUCH CHILD FORTY YEARS OR LESS BEFORE THE EFFECTIVE DATE OF THIS SECTION OR COMMENCED WITHIN FORTY YEARS OF SUCH CHILD REACHING THE AGE OF EIGHTEEN YEARS. ANY CIVIL CLAIM OR CAUSE OF ACTION BROUGHT AFTER FORTY YEARS AFTER SUCH CHILD REACHES EIGHTEEN YEARS OF AGE MAY BE COMMENCED, MINUS ANY MONETARY AWARD FOR DAMAGES.

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

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

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

S 4. The civil practice law and rules is amended by adding a new section 214-f to read as follows:

S 214-F. ACTION BY VICTIM OF CONDUCT CONSTITUTING CERTAIN SEXUAL OFFENSES AND NOTICE OF CLAIM AS CONDITION PRECEDENT. SECTIONS FIFTY-E AND FIFTY-I OF THE GENERAL MUNICIPAL LAW, SECTION THIRTY-EIGHT HUNDRED THIRTEEN OF THE EDUCATION LAW AND THE PROVISIONS OF ANY GENERAL, SPECIAL OR LOCAL LAW OR CHARTER REQUIRING AS A CONDITION PRECEDENT TO COMMENCEMENT OF AN ACTION OR SPECIAL PROCEEDING THAT A NOTICE OF A CLAIM BE FILED OR PRESENTED WITHIN A SPECIFIED PERIOD OF TIME AFTER THE CLAIM OR ACTION OR ACTION ACCRUED, SHALL NOT APPLY TO ANY CLAIM MADE FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A DEFENDANT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26, OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE.

S 5. The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 6. This act shall take effect immediately.