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2011-2012 Regular Sessions

I N S E N A T E

February 17, 2011

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; to amend the civil practice law and rules, in relation to the timeliness for commencing certain civil actions related to sex offenses; and to amend the general municipal law, in relation to claims against a city, county, town, village, fire district or school district

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

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

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1 AS A RESULT OF CONDUCT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS
2 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST
3 A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION
4 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS
5 THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORM-
6 ANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW, OR A PREDECESSOR
7 STATUTE THAT PROHIBITED SUCH CONDUCT AT THE TIME OF THE ACT, WHICH
8 CONDUCT WAS COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE,
9 THE TIME WHICH THE ACTION MUST BE COMMENCED SHALL BE WHEN ONE KNOWS OR
10 REASONABLY SHOULD HAVE KNOWN OF THE ALLEGED CRIMINAL ACT AND KNOWS OR
11 SHOULD HAVE KNOWN THAT THE CRIMINAL ACT CAUSED INJURY WITHIN THREE YEARS
12 OF THE DISCOVERY OF THE INJURY.

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

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

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

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

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

54 S 4. Section 50-i of the general municipal law is amended by adding a
55 new subdivision 5 to read as follows:

1 5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THIS SECTION
2 SHALL NOT APPLY TO ANY CLAIM MADE AGAINST A CITY, COUNTY, TOWN, VILLAGE,
3 FIRE DISTRICT OR SCHOOL DISTRICT FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER
4 INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A DEFENDANT WHICH
5 WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED
6 THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
7 YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26, OR 255.27 OF
8 THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE,
9 OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION
10 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
11 YEARS OF AGE.

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

19 S 6. This act shall take effect immediately, provided that section
20 three of this act shall take effect on the sixtieth day after this act
21 shall have become a law.