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I N   S E N A T E

February 14, 2012

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Introduced by Sen. LANZA -- 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, the general municipal law, the court of claims act and the education law, 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 OF A DEFENDANT WHICH WOULD CONSTITUTE A SEXUAL  
23    OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW  
24    COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS  
25    DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED

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

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

8 S 3. Subdivision 8 of section 50-e of the general municipal law, as  
9 amended by chapter 24 of the laws of 1988, is amended to read as  
10 follows:

11 8. Inapplicability of section. (A) This section shall not apply to  
12 claims arising under the provisions of the workers' compensation law,  
13 the volunteer firefighters' benefit law, or the volunteer ambulance  
14 workers' benefit law or to claims against public corporations by their  
15 own infant wards.

16 (B) THIS SECTION SHALL NOT APPLY TO ANY CLAIM MADE FOR PHYSICAL,  
17 PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF  
18 CONDUCT OF A DEFENDANT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS  
19 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST  
20 A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION  
21 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS  
22 THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORM-  
23 ANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A  
24 CHILD LESS THAN EIGHTEEN YEARS OF AGE.

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

27 5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THIS SECTION  
28 SHALL NOT APPLY TO ANY CLAIM MADE AGAINST A CITY, COUNTY, TOWN, VILLAGE,  
29 FIRE DISTRICT OR SCHOOL DISTRICT FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER  
30 INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A DEFENDANT WHICH  
31 WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED  
32 THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN  
33 YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF  
34 THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE,  
35 OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION  
36 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN  
37 YEARS OF AGE.

38 S 5. Section 10 of the court of claims act is amended by adding a new  
39 subdivision 10 to read as follows:

40 10. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THIS SECTION  
41 SHALL NOT APPLY TO ANY CLAIM TO RECOVER DAMAGES FOR PHYSICAL, PSYCHOLOG-  
42 ICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A  
43 DEFENDANT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE  
44 ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN  
45 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR  
46 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN  
47 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED  
48 IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN  
49 EIGHTEEN YEARS OF AGE.

50 S 6. Subdivision 2 of section 3813 of the education law, as amended by  
51 chapter 346 of the laws of 1978, is amended to read as follows:

52 2. Notwithstanding anything to the contrary hereinbefore contained in  
53 this section, no action or special proceeding founded upon tort shall be  
54 prosecuted or maintained against any of the parties named in this  
55 section or against any teacher or member of the supervisory or adminis-  
56 trative staff or employee where the alleged tort was committed by such

1 teacher or member or employee acting in the discharge of his duties  
2 within the scope of his employment and/or under the direction of the  
3 board of education, trustee or trustees, or governing body of the school  
4 unless a notice of claim shall have been made and served in compliance  
5 with section fifty-e of the general municipal law. Every such action  
6 shall be commenced pursuant to the provisions of section fifty-i of the  
7 general municipal law, PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT  
8 APPLY TO ANY CLAIM TO RECOVER DAMAGES FOR PHYSICAL, PSYCHOLOGICAL, OR  
9 OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A DEFENDANT  
10 WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE  
11 HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN  
12 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR  
13 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN  
14 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED  
15 IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN  
16 EIGHTEEN YEARS OF AGE.

17 S 7. The provisions of this act shall be severable, and if any  
18 clause, sentence, paragraph, subdivision or part of this act shall be  
19 adjudged by any court of competent jurisdiction to be invalid, such  
20 judgment shall not affect, impair, or invalidate the remainder thereof,  
21 but shall be confined in its operation to the clause, sentence, para-  
22 graph, subdivision or part thereof directly involved in the controversy  
23 in which such judgment shall have been rendered.

24 S 8. This act shall take effect immediately.