

575

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. CUSICK, V. LOPEZ, COLTON, FITZPATRICK, SCARBOROUGH, GUNTHER, TITONE -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, CERETTO, COOK, CROUCH, DUPREY, GRAF, JACOBS, RAIA, THIELE -- read once and referred 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:

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

LBD00838-01-3

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

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

18 8. Inapplicability of section. (A) This section shall not apply to
19 claims arising under the provisions of the workers' compensation law,
20 the volunteer firefighters' benefit law, or the volunteer ambulance
21 workers' benefit law or to claims against public corporations by their
22 own infant wards.

23 (B) THIS SECTION SHALL NOT APPLY TO ANY CLAIM MADE FOR PHYSICAL,
24 PSYCHOLOGICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF
25 CONDUCT OF A DEFENDANT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS
26 DEFINED IN ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST
27 A CHILD LESS THAN EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION
28 255.25, 255.26 OR 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS
29 THAN EIGHTEEN YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORM-
30 ANCE AS DEFINED IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A
31 CHILD LESS THAN EIGHTEEN YEARS OF AGE.

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

34 5. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THIS SECTION
35 SHALL NOT APPLY TO ANY CLAIM MADE AGAINST A CITY, COUNTY, TOWN, VILLAGE,
36 FIRE DISTRICT OR SCHOOL DISTRICT FOR PHYSICAL, PSYCHOLOGICAL, OR OTHER
37 INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A DEFENDANT WHICH
38 WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE HUNDRED
39 THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
40 YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR 255.27 OF
41 THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN YEARS OF AGE,
42 OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED IN SECTION
43 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
44 YEARS OF AGE.

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

47 10. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, THIS SECTION
48 SHALL NOT APPLY TO ANY CLAIM TO RECOVER DAMAGES FOR PHYSICAL, PSYCHOLOG-
49 ICAL, OR OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A
50 DEFENDANT WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE
51 ONE HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN
52 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR
53 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
54 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED
55 IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN
56 EIGHTEEN YEARS OF AGE.

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

3 2. Notwithstanding anything to the contrary hereinbefore contained in
4 this section, no action or special proceeding founded upon tort shall be
5 prosecuted or maintained against any of the parties named in this
6 section or against any teacher or member of the supervisory or adminis-
7 trative staff or employee where the alleged tort was committed by such
8 teacher or member or employee acting in the discharge of his duties
9 within the scope of his employment and/or under the direction of the
10 board of education, trustee or trustees, or governing body of the school
11 unless a notice of claim shall have been made and served in compliance
12 with section fifty-e of the general municipal law. Every such action
13 shall be commenced pursuant to the provisions of section fifty-i of the
14 general municipal law, PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT
15 APPLY TO ANY CLAIM TO RECOVER DAMAGES FOR PHYSICAL, PSYCHOLOGICAL, OR
16 OTHER INJURY OR CONDITION SUFFERED AS A RESULT OF CONDUCT OF A DEFENDANT
17 WHICH WOULD CONSTITUTE A SEXUAL OFFENSE AS DEFINED IN ARTICLE ONE
18 HUNDRED THIRTY OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN
19 EIGHTEEN YEARS OF AGE, INCEST AS DEFINED IN SECTION 255.25, 255.26 OR
20 255.27 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN EIGHTEEN
21 YEARS OF AGE, OR THE USE OF A CHILD IN A SEXUAL PERFORMANCE AS DEFINED
22 IN SECTION 263.05 OF THE PENAL LAW COMMITTED AGAINST A CHILD LESS THAN
23 EIGHTEEN YEARS OF AGE.

24 S 7. The provisions of this act shall be severable, and if any
25 clause, sentence, paragraph, subdivision or part of this act shall be
26 adjudged by any court of competent jurisdiction to be invalid, such
27 judgment shall not affect, impair, or invalidate the remainder thereof,
28 but shall be confined in its operation to the clause, sentence, para-
29 graph, subdivision or part thereof directly involved in the controversy
30 in which such judgment shall have been rendered.

31 S 8. This act shall take effect immediately.