

STATE OF NEW YORK

5885--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 16, 2017

Introduced by M. of A. ROSENTHAL, DINOWITZ, SEPULVEDA, ENGLEBRIGHT, GUNTHER, OTIS, JAFFEE, STIRPE, SIMOTAS, GALEF, HOOPER, MOSLEY, JENNE, LIFTON, BARRETT, PAULIN, ARROYO, WALKER, WEPRIN, BICHOTTE, SIMON, BLAKE, CAHILL, SEAWRIGHT, BARRON, BUCHWALD, BRONSON, BRINDISI, HEVESI, HYNDMAN, ORTIZ, NOLAN, SKOUFIS, HARRIS, JONES, CARROLL, RIVERA, GLICK, NIOU, DE LA ROSA, PRETLOW, GOTTFRIED, D'URSO, VANEL, HIKIND, TITUS -- Multi-Sponsored by -- M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to the statute of limitations in criminal prosecution of a sexual offense committed against a child; to amend the civil practice law and rules, in relation to the statute of limitations for civil actions related to a sexual offense committed against a child, reviving such actions otherwise barred by the existing statute of limitations and granting trial preference to such actions; to amend the general municipal law, in relation to providing that the notice of claim provisions shall not apply to such actions; to amend the court of claims act, in relation to providing that the notice of intention to file provisions shall not apply to such actions; to amend the education law, in relation to providing that the notice of claim provisions shall not apply to such actions; and to amend the judiciary law, in relation to judicial training relating to sexual abuse of minors and rules reviving civil actions relating to sexual offenses committed against children

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:

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

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

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

16 (b) Notwithstanding any provision of law which imposes a period of
17 limitation to the contrary, with respect to all civil claims or causes
18 of action brought by any person for physical, psychological or other
19 injury or condition suffered by such person as a result of conduct which
20 would constitute a sexual offense as defined in article one hundred
21 thirty of the penal law committed against such person who was less than
22 eighteen years of age, incest as defined in section 255.27, 255.26 or
23 255.25 of the penal law committed against such person who was less than
24 eighteen years of age, or the use of such person in a sexual performance
25 as defined in section 263.05 of the penal law, or a predecessor statute
26 that prohibited such conduct at the time of the act, which conduct was
27 committed against such person who was less than eighteen years of age,
28 such action may be commenced, against any party whose intentional or
29 negligent acts or omissions are alleged to have resulted in the commis-
30 sion of said conduct, on or before the plaintiff or infant plaintiff
31 reaches the age of fifty years. In any such claim or action, in addition
32 to any other defense and affirmative defense that may be available in
33 accordance with law, rule or the common law, to the extent that the acts
34 alleged in such action are of the type described in subdivision one of
35 section 130.30 of the penal law or subdivision one of section 130.45 of
36 the penal law, the affirmative defenses set forth, respectively, in the
37 closing paragraph of such section of the penal law shall apply.

38 § 3. The civil practice law and rules is amended by adding a new
39 section 214-g to read as follows:

40 § 214-g. Certain child sexual abuse cases. Notwithstanding any
41 provision of law which imposes a period of limitation to the contrary,
42 every civil claim or cause of action brought against any party alleging
43 intentional or negligent acts or omissions by a person for physical,
44 psychological, or other injury or condition suffered as a result of
45 conduct which would constitute a sexual offense as defined in article
46 one hundred thirty of the penal law committed against a child less than
47 eighteen years of age, incest as defined in section 255.27, 255.26 or
48 255.25 of the penal law committed against a child less than eighteen
49 years of age, or the use of a child in a sexual performance as defined
50 in section 263.05 of the penal law, or a predecessor statute that
51 prohibited such conduct at the time of the act, which conduct was
52 committed against a child less than eighteen years of age, which is
53 barred as of the effective date of this section because the applicable
54 period of limitation has expired is hereby revived, and action thereon
55 may be commenced not earlier than six months after, and not later than
56 one year and six months after the effective date of this section,

1 subject to paragraph two of subdivision (i) of rule thirty-two hundred
 2 eleven of this chapter. In any such claim or action, in addition to any
 3 other defense and affirmative defense that may be available in accord-
 4 ance with law, rule or the common law, to the extent that the acts
 5 alleged in such action are of the type described in subdivision one of
 6 section 130.30 of the penal law or subdivision one of section 130.45 of
 7 the penal law, the affirmative defenses set forth, respectively, in the
 8 closing paragraph of such section of the penal law shall apply.

9 § 4. Rule 3211 of the civil practice law and rules is amended by
 10 adding a new subdivision (i) to read as follows:

11 (i) Motions to dismiss and motions to dismiss affirmative defenses in
 12 certain actions in which conduct constituting the commission of certain
 13 sexual offenses are alleged. 1. In any action where the plaintiff seeks
 14 to revive an action pursuant to section two hundred fourteen-g of this
 15 chapter after the effective date of this subdivision which had been time
 16 barred, any affirmative defense of laches, delay, or material impairment
 17 in the defense or investigation of the claim must be supported by a
 18 certificate of merit submitted by a person with knowledge of the facts
 19 setting forth the specific manner in which the defense or investigation
 20 has been affected. Said certificate must be filed at or before the time
 21 in which the answer is served, unless otherwise provided by order of the
 22 court.

23 2. Upon motion by any party, the court shall determine by a preponder-
 24 ance of the evidence, whether defendant has sustained his or her burden
 25 of proof on any motion to dismiss the action or on any affirmative
 26 defense in which it is alleged that prejudice has been caused to defend-
 27 ant in the investigation or defense of the action directly resulting
 28 from a delay in commencing the action. A defendant shall not be deemed
 29 prejudiced solely on account of the passage of time.

30 3. Furthermore, in any such action, in addition to any other defense
 31 and affirmative defense that may be available in accordance with law,
 32 rule or the common law, to the extent that the acts alleged in such
 33 action are of the type described in subdivision one of section 130.30 of
 34 the penal law or subdivision one of section 130.45 of the penal law, the
 35 affirmative defenses set forth, respectively, in the closing paragraph
 36 of such section of the penal law shall apply.

37 § 5. Subdivision (a) of rule 3403 of the civil practice law and rules
 38 is amended by adding a new paragraph 7 to read as follows:

39 7. any action which has been revived pursuant to section two hundred
 40 fourteen-g of this chapter.

41 § 6. Subdivision 8 of section 50-e of the general municipal law, as
 42 amended by chapter 24 of the laws of 1988, is amended to read as
 43 follows:

44 8. Inapplicability of section. (a) This section shall not apply to
 45 claims arising under the provisions of the workers' compensation law,
 46 the volunteer firefighters' benefit law, or the volunteer ambulance
 47 workers' benefit law or to claims against public corporations by their
 48 own infant wards.

49 (b) This section shall not apply to any claim made for physical,
 50 psychological, or other injury or condition suffered as a result of
 51 conduct which would constitute a sexual offense as defined in article
 52 one hundred thirty of the penal law committed against a child less than
 53 eighteen years of age, incest as defined in section 255.27, 255.26 or
 54 255.25 of the penal law committed against a child less than eighteen
 55 years of age, or the use of a child in a sexual performance as defined

1 in section 263.05 of the penal law committed against a child less than
2 eighteen years of age.

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

5 5. Notwithstanding any provision of law to the contrary, this section
6 shall not apply to any claim made against a city, county, town, village,
7 fire district or school district for physical, psychological, or other
8 injury or condition suffered as a result of conduct which would consti-
9 tute a sexual offense as defined in article one hundred thirty of the
10 penal law committed against a child less than eighteen years of age,
11 incest as defined in section 255.27, 255.26 or 255.25 of the penal law
12 committed against a child less than eighteen years of age, or the use of
13 a child in a sexual performance as defined in section 263.05 of the
14 penal law committed against a child less than eighteen years of age.

15 § 8. Section 10 of the court of claims act is amended by adding a new
16 subdivision 10 to read as follows:

17 10. Notwithstanding any provision of law to the contrary, this section
18 shall not apply to any claim to recover damages for physical, psycholog-
19 ical, or other injury or condition suffered as a result of conduct which
20 would constitute a sexual offense as defined in article one hundred
21 thirty of the penal law committed against a child less than eighteen
22 years of age, incest as defined in section 255.27, 255.26 or 255.25 of
23 the penal law committed against a child less than eighteen years of age,
24 or the use of a child in a sexual performance as defined in section
25 263.05 of the penal law committed against a child less than eighteen
26 years of age.

27 § 9. Subdivision 2 of section 3813 of the education law, as amended by
28 chapter 346 of the laws of 1978, is amended to read as follows:

29 2. Notwithstanding anything to the contrary hereinbefore contained in
30 this section, no action or special proceeding founded upon tort shall be
31 prosecuted or maintained against any of the parties named in this
32 section or against any teacher or member of the supervisory or adminis-
33 trative staff or employee where the alleged tort was committed by such
34 teacher or member or employee acting in the discharge of his duties
35 within the scope of his employment and/or under the direction of the
36 board of education, trustee or trustees, or governing body of the school
37 unless a notice of claim shall have been made and served in compliance
38 with section fifty-e of the general municipal law. Every such action
39 shall be commenced pursuant to the provisions of section fifty-i of the
40 general municipal law; provided, however, that this section shall not
41 apply to any claim to recover damages for physical, psychological, or
42 other injury or condition suffered as a result of conduct which would
43 constitute a sexual offense as defined in article one hundred thirty of
44 the penal law committed against a child less than eighteen years of age,
45 incest as defined in section 255.27, 255.26 or 255.25 of the penal law
46 committed against a child less than eighteen years of age, or the use of
47 a child in a sexual performance as defined in section 263.05 of the
48 penal law committed against a child less than eighteen years of age.

49 § 10. Section 219-c of the judiciary law, as added by chapter 506 of
50 the laws of 2011, is amended to read as follows:

51 § 219-c. Crimes involving sexual assault and the sexual abuse of
52 minors; judicial training. The office of court administration shall
53 provide training for judges and justices with respect to crimes involv-
54 ing sexual assault, and the sexual abuse of minors.

55 § 11. The judiciary law is amended by adding a new section 219-d to
56 read as follows:

1 § 219-d. Rules reviving certain actions; sexual offenses against chil-
2 dren. The chief administrator of the courts shall promulgate rules for
3 the timely adjudication of revived actions brought pursuant to section
4 two hundred fourteen-g of the civil practice law and rules.

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

12 § 13. This act shall take effect immediately; except that section ten
13 of this act shall take effect six months after this act shall have
14 become a law; provided, however, that training for cases brought pursu-
15 ant to section 214-g of the civil practice law and rules, as added by
16 section three of this act, shall commence three months after this act
17 shall have become a law; and section eleven of this act shall take
18 effect three months after this act shall have become a law.