

# STATE OF NEW YORK

8421

2017-2018 Regular Sessions

## IN ASSEMBLY

June 14, 2017

Introduced by M. of A. ROSENTHAL -- (at request of the Governor) -- read once and referred to the Committee on Codes

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:  
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

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

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1 [~~eighteen~~] twenty-three or the offense is reported to a law enforcement  
2 agency or statewide central register of child abuse and maltreatment,  
3 whichever occurs earlier.

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

7 (b) Notwithstanding any provision of law which imposes a period of  
8 limitation to the contrary, with respect to all civil claims or causes  
9 of action brought by any person for physical, psychological or other  
10 injury or condition suffered by such person as a result of conduct which  
11 would constitute a sexual offense as defined in article one hundred  
12 thirty of the penal law committed against such person who was less than  
13 eighteen years of age, incest as defined in section 255.27, 255.26 or  
14 255.25 of the penal law committed against such person who was less than  
15 eighteen years of age, or the use of such person in a sexual performance  
16 as defined in section 263.05 of the penal law, or a predecessor statute  
17 that prohibited such conduct at the time of the act, which conduct was  
18 committed against such person who was less than eighteen years of age,  
19 such action may be commenced, against any party whose intentional or  
20 negligent acts or omissions are alleged to have resulted in the commis-  
21 sion of said conduct, on or before the plaintiff or infant plaintiff  
22 reaches the age of fifty years. In any such claim or action, in addition  
23 to any other defense and affirmative defense that may be available in  
24 accordance with law, rule or the common law, to the extent that the acts  
25 alleged in such action are of the type described in subdivision one of  
26 section 130.30 of the penal law or subdivision one of section 130.45 of  
27 the penal law, the affirmative defenses set forth, respectively, in the  
28 closing paragraph of such section of the penal law shall apply.

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

31 § 214-g. Certain child sexual abuse cases. Notwithstanding any  
32 provision of law which imposes a period of limitation to the contrary,  
33 every civil claim or cause of action brought against any party alleging  
34 intentional or negligent acts or omissions by a person for physical,  
35 psychological, or other injury or condition suffered as a result of  
36 conduct which would constitute a sexual offense as defined in article  
37 one hundred thirty of the penal law committed against a child less than  
38 eighteen years of age, incest as defined in section 255.27, 255.26 or  
39 255.25 of the penal law committed against a child less than eighteen  
40 years of age, or the use of a child in a sexual performance as defined  
41 in section 263.05 of the penal law, or a predecessor statute that  
42 prohibited such conduct at the time of the act, which conduct was  
43 committed against a child less than eighteen years of age, which is  
44 barred as of the effective date of this section because the applicable  
45 period of limitation has expired is hereby revived, and action thereon  
46 may be commenced not earlier than six months after, and not later than  
47 one year and six months after the effective date of this section,  
48 subject to paragraph two of subdivision (i) of rule thirty-two hundred  
49 eleven of this chapter. In any such claim or action, in addition to any  
50 other defense and affirmative defense that may be available in accord-  
51 ance with law, rule or the common law, to the extent that the acts  
52 alleged in such action are of the type described in subdivision one of  
53 section 130.30 of the penal law or subdivision one of section 130.45 of  
54 the penal law, the affirmative defenses set forth, respectively, in the  
55 closing paragraph of such section of the penal law shall apply.

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

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

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

22 3. Furthermore, in any such action, in addition to any other defense  
23 and affirmative defense that may be available in accordance with law,  
24 rule or the common law, to the extent that the acts alleged in such  
25 action are of the type described in subdivision one of section 130.30 of  
26 the penal law or subdivision one of section 130.45 of the penal law, the  
27 affirmative defenses set forth, respectively, in the closing paragraph  
28 of such section of the penal law shall apply.

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

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

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

36 8. Inapplicability of section. (a) This section shall not apply to  
37 claims arising under the provisions of the workers' compensation law,  
38 the volunteer firefighters' benefit law, or the volunteer ambulance  
39 workers' benefit law or to claims against public corporations by their  
40 own infant wards.

41 (b) This section shall not apply to any claim made for physical,  
42 psychological, or other injury or condition suffered as a result of  
43 conduct 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 255.27, 255.26 or  
46 255.25 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 § 7. Section 50-i of the general municipal law is amended by adding a  
51 new subdivision 5 to read as follows:

52 5. Notwithstanding any provision of law to the contrary, this section  
53 shall not apply to any claim made against a city, county, town, village,  
54 fire district or school district for physical, psychological, or other  
55 injury or condition suffered as a result of conduct which would consti-  
56 tute a sexual offense as defined in article one hundred thirty of the

1 penal law committed against a child less than eighteen years of age,  
2 incest as defined in section 255.27, 255.26 or 255.25 of the penal law  
3 committed against a child less than eighteen years of age, or the use of  
4 a child in a sexual performance as defined in section 263.05 of the  
5 penal law committed against a child less than eighteen years of age.

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

8 10. Notwithstanding any provision of law to the contrary, this section  
9 shall not apply to any claim to recover damages for physical, psycholog-  
10 ical, or other injury or condition suffered as a result of conduct which  
11 would constitute a sexual offense as defined in article one hundred  
12 thirty of the penal law committed against a child less than eighteen  
13 years of age, incest as defined in section 255.27, 255.26 or 255.25 of  
14 the penal law committed against a child less than eighteen years of age,  
15 or the use of a child in a sexual performance as defined in section  
16 263.05 of the penal law committed against a child less than eighteen  
17 years of age.

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

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

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

42 § 219-c. Crimes involving sexual assault and the sexual abuse of  
43 minors; judicial training. The office of court administration shall  
44 provide training for judges and justices with respect to crimes involv-  
45 ing sexual assault, and the sexual abuse of minors.

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

48 § 219-d. Rules reviving certain actions; sexual offenses against chil-  
49 dren. The chief administrator of the courts shall promulgate rules for  
50 the timely adjudication of revived actions brought pursuant to section  
51 two hundred fourteen-g of the civil practice law and rules.

52 § 12. The provisions of this act shall be severable, and if any  
53 clause, sentence, paragraph, subdivision or part of this act shall be  
54 adjudged by any court of competent jurisdiction to be invalid, such  
55 judgment shall not affect, impair, or invalidate the remainder thereof,  
56 but shall be confined in its operation to the clause, sentence, para-

1 graph, subdivision or part thereof directly involved in the controversy  
2 in which such judgment shall have been rendered.

3 § 13. This act shall take effect immediately; except that section ten  
4 of this act shall take effect six months after this act shall have  
5 become a law; provided, however, that training for cases brought pursu-  
6 ant to section 214-g of the civil practice law and rules, as added by  
7 section three of this act, shall commence three months after this act  
8 shall have become a law; and section eleven of this act shall take  
9 effect three months after this act shall have become a law.