

# STATE OF NEW YORK

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5885

2017-2018 Regular Sessions

## IN ASSEMBLY

February 16, 2017

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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, O'DONNELL, SIMON, BLAKE, CAHILL, SEAWRIGHT, BARRON, BUCHWALD, BRONSON, BRINDISI, HEVESI, HYNDMAN, ORTIZ, NOLAN, SKOUFIS, HARRIS, JONES -- 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; to amend the social services law, in relation to designating members of the clergy as persons required to report cases of suspected child abuse or maltreatment; 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

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

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

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

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

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

38 § 214-g. Certain child sexual abuse cases. Notwithstanding any  
39 provision of law which imposes a period of limitation to the contrary,  
40 every civil claim or cause of action brought by a person for physical,  
41 psychological, or other injury or condition suffered as a result of  
42 conduct which would constitute a sexual offense as defined in article  
43 one hundred thirty of the penal law committed against a child less than  
44 eighteen years of age, incest as defined in section 255.27, 255.26 or  
45 255.25 of the penal law committed against a child less than eighteen  
46 years of age, or the use of a child in a sexual performance as defined  
47 in section 263.05 of the penal law, or a predecessor statute that  
48 prohibited such conduct at the time of the act, which conduct was  
49 committed against a child less than eighteen years of age, which is  
50 barred as of the effective date of this section because the applicable  
51 period of limitation has expired is hereby revived, and action thereon  
52 may be commenced not earlier than six months after, and not later than  
53 one year after the effective date of this section, subject to paragraph  
54 two of subdivision (i) of rule thirty-two hundred eleven of this chap-  
55 ter. In any such claim or action, in addition to any other defense and  
56 affirmative defense that may be available in accordance with law, rule

1 or the common law, to the extent that the acts alleged in such action  
2 are of the type described in subdivision one of section 130.30 of the  
3 penal law or subdivision one of section 130.45 of the penal law, the  
4 affirmative defenses set forth, respectively, in the closing paragraph  
5 of such section of the penal law shall apply.

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

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

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

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

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

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

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

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

46 (b) This section shall not apply to any claim made for physical,  
47 psychological, or other injury or condition suffered as a result of  
48 conduct which would constitute a sexual offense as defined in article  
49 one hundred thirty of the penal law committed against a child less than  
50 eighteen years of age, incest as defined in section 255.27, 255.26 or  
51 255.25 of the penal law committed against a child less than eighteen  
52 years of age, or the use of a child in a sexual performance as defined  
53 in section 263.05 of the penal law committed against a child less than  
54 eighteen years of age.

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

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

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

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

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

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

§ 10. Paragraph (a) of subdivision 1 of section 413 of the social services law, as separately amended by chapters 126 and 205 of the laws of 2014, is amended to read as follows:

(a) The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an

1 abused or maltreated child: any physician; registered physician assist-  
2 ant; surgeon; medical examiner; coroner; dentist; dental hygienist;  
3 osteopath; optometrist; chiropractor; podiatrist; resident; intern;  
4 psychologist; registered nurse; social worker; emergency medical techni-  
5 cian; licensed creative arts therapist; licensed marriage and family  
6 therapist; licensed mental health counselor; licensed psychoanalyst;  
7 licensed behavior analyst; certified behavior analyst assistant; hospi-  
8 tal personnel engaged in the admission, examination, care or treatment  
9 of persons; a Christian Science practitioner; school official, which  
10 includes but is not limited to school teacher, school guidance counse-  
11 lor, school psychologist, school social worker, school nurse, school  
12 administrator or other school personnel required to hold a teaching or  
13 administrative license or certificate; full or part-time compensated  
14 school employee required to hold a temporary coaching license or profes-  
15 sional coaching certificate; social services worker; director of a chil-  
16 dren's overnight camp, summer day camp or traveling summer day camp, as  
17 such camps are defined in section thirteen hundred ninety-two of the  
18 public health law; day care center worker; school-age child care worker;  
19 provider of family or group family day care; employee or volunteer in a  
20 residential care facility for children that is licensed, certified or  
21 operated by the office of children and family services; or any other  
22 child care or foster care worker; mental health professional; substance  
23 abuse counselor; alcoholism counselor; all persons credentialed by the  
24 office of alcoholism and substance abuse services; member of the clergy  
25 of any religion, including but not limited to a clergyman and minister  
26 as such terms are defined in section two of the religious corporations  
27 law, and shall also include any person responsible for the hiring,  
28 retention, or supervising of such member of the clergy of a religious  
29 institution or responsible for the administration of a religious insti-  
30 tution; peace officer; police officer; district attorney or assistant  
31 district attorney; investigator employed in the office of a district  
32 attorney; or other law enforcement official.

33 § 11. Subdivision 1 of section 413 of the social services law is  
34 amended by adding a new paragraph (e) to read as follows:

35 (e) Unless the person confessing or confiding waives the privilege  
36 available pursuant to section forty-five hundred five of the civil prac-  
37 tice law and rules, a member of the clergy of any religion, including  
38 but not limited to a clergyman and minister as defined in section two of  
39 the religious corporations law, shall not be required to make a report  
40 as required by paragraph (a) of this subdivision if the confession or  
41 confidence was made to him or her in his or her professional character  
42 as spiritual advisor.

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

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

49 § 13. The judiciary law is amended by adding a new section 219-d to  
50 read as follows:

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

55 § 14. The provisions of this act shall be severable, and if any  
56 clause, sentence, paragraph, subdivision or part of this act shall be

1 adjudged by any court of competent jurisdiction to be invalid, such  
2 judgment shall not affect, impair, or invalidate the remainder thereof,  
3 but shall be confined in its operation to the clause, sentence, para-  
4 graph, subdivision or part thereof directly involved in the controversy  
5 in which such judgment shall have been rendered.

6 § 15. This act shall take effect immediately; except that section  
7 twelve of this act shall take effect six months after this act shall  
8 have become a law; provided, however, that training for cases brought  
9 pursuant to section 214-g of the civil practice law and rules, as added  
10 by section three of this act, shall commence three months after this act  
11 shall have become a law; and section thirteen of this act shall take  
12 effect three months after this act shall have become a law.