

# STATE OF NEW YORK

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6585--A

2017-2018 Regular Sessions

## IN SENATE

June 5, 2017

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Introduced by Sens. KLEIN, ALCANTARA, AVELLA, CARLUCCI, HAMILTON, PERALTA, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, the criminal procedure law, the court of claims act and the general municipal law, in relation to the timeliness for commencing certain civil actions related to sex offenses; to establish the child victims commission, and providing for its powers and duties; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. There is hereby established a commission to be known as  
2 the "child victims commission", which shall examine, evaluate and make  
3 binding recommendations concerning civil claims for a cause of action  
4 brought by any person for physical, psychological or other injury or  
5 condition suffered by such person, as a result of conduct which would  
6 constitute a sex offense, as defined in article one hundred thirty of  
7 the penal law committed against such person when he or she was less than  
8 eighteen years of age, incest as defined in section 255.25, 255.26 or  
9 255.27 of the penal law committed against such person when he or she was  
10 less than eighteen years of age, or the use of such person in a sexual  
11 performance as defined in section 263.05 of the penal law when he or she  
12 was less than seventeen years of age, where the applicable period of  
13 limitation has expired on the claim including, but not limited to,  
14 allowing such a civil cause of action that is time barred to be revived.  
15 The child victims commission shall consist of 5 members, each  
16 appointed by the chief judge of the court of appeals; provided, however,  
17 that:

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

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1 (a) one member shall be a former district attorney or assistant  
2 district attorney;

3 (b) one member shall be a former defense attorney with experience  
4 litigating personal injury claims;

5 (c) one member shall be a former plaintiffs' attorney with experience  
6 litigating claims in which the plaintiff was the victim of sexual abuse  
7 as a minor; and

8 (d) one member shall be a physician licensed in this state with exper-  
9 tise in trauma.

10 The chief judge of the court of appeals shall designate one such  
11 member as the chair of the commission.

12 Within one year after the date the chief administrative judge promul-  
13 gates the rules and regulations necessary to effectuate the provisions  
14 of this section, any person with a time barred claim referred to in the  
15 opening paragraph of this section may submit the claim to the commission  
16 for review. Within 6 months of the effective date of this section, the  
17 chief administrative judge shall promulgate rules and regulations  
18 regarding the format and content of the form for claims submitted to the  
19 commission.

20 A certificate of merit shall be filed with the commission by the  
21 claimant or claimant's attorney, and by at least one licensed mental  
22 health practitioner who is licensed to practice in this state, declaring  
23 and setting forth the factors which support the declaration:

24 (1) that the claimant has reviewed the facts of the case, that the  
25 claimant has consulted with at least one mental health practitioner who  
26 is licensed to practice and practices in this state and who the claimant  
27 reasonably believes is knowledgeable of the relevant facts and issues  
28 involved in the particular action, and that the claimant has concluded  
29 on the basis of that review and consultation that there is reasonable  
30 cause for the filing of the action. The person consulted may not be a  
31 party to the litigation; and

32 (2) that the mental health practitioner consulted is licensed to prac-  
33 tice and practices in this state and is not a party to any litigation  
34 related to the claim, that such practitioner is not treating and has not  
35 treated the plaintiff, and that such practitioner has interviewed the  
36 claimant and is knowledgeable of the relevant facts and issues involved  
37 in the particular action, and has concluded, on the basis of his or her  
38 knowledge of the facts and issues, that in his or her professional opin-  
39 ion there is a reasonable basis to believe that the claimant was the  
40 victim of a sex offense defined in article 130 of the penal law when the  
41 claimant was under the age of eighteen at the time of the offense. The  
42 commission shall notify the claimant in writing of the final determi-  
43 nation of the commission regarding the submitted claim. Any claim  
44 submitted to the commission must receive a majority of votes of the  
45 commission members for approval.

46 The commission shall approve all claims submitted to the commission in  
47 good faith by the claimant.

48 The commission shall hold hearings on submitted claims to permit a  
49 claimant to present information or evidence that he or she believes is  
50 necessary for the commission to fully evaluate the claim.

51 Notwithstanding any provision of law which imposes a period of limita-  
52 tion to the contrary, every civil claim or cause of action brought  
53 against any party alleging intentional or negligent acts or omissions by  
54 a person for physical, psychological, or other injury or condition  
55 suffered as a result of conduct which would constitute a sex offense as  
56 defined in article 130 of the penal law committed against a child less

1 than eighteen years of age, incest as defined in section 255.27, 255.26  
2 or 255.25 of the penal law committed against a child less than eighteen  
3 years of age, or the use of a child in a sexual performance as defined  
4 in section 263.05 of the penal law, or a predecessor statute that  
5 prohibited such conduct at the time of the act, which conduct was  
6 committed against a child less than seventeen years of age, which is  
7 barred as of the effective date of this section because the applicable  
8 period of limitation has expired is hereby revived, provided that such  
9 claim was submitted to and approved by the commission, and action there-  
10 on is commenced on or before one year following the date of the determi-  
11 nation by the commission concerning the claim.

12 Upon submission of a time barred claim to the commission, the claimant  
13 shall waive the right to file a civil action in any court of competent  
14 jurisdiction in this state for damages in relation to a claim referred  
15 to in the opening paragraph of this section, unless the commission  
16 renders a determination that the claimant may commence a civil action  
17 during the one year period under this section. Any determination by the  
18 commission denying the claim shall be made without prejudice. A claim  
19 denied without prejudice by the commission, may be resubmitted to the  
20 commission for de novo review if new evidence is submitted with the  
21 claim to the commission.

22 To the maximum extent feasible, the commission shall be entitled to  
23 request and receive such resources, facilities and personnel of the  
24 office of court administration as it may need to carry out its powers  
25 and duties pursuant to this section.

26 The commission shall submit a report to the chief judge of the court  
27 of appeals, governor, speaker of the assembly and temporary president of  
28 the senate, within two years of the effective date of this section,  
29 detailing:

- 30 (a) the number of claims received;
- 31 (b) the number of claimants who submitted claims;
- 32 (c) the number of claims approved by the commission;
- 33 (d) the number of claims denied by the commission;
- 34 (e) the ages of the claims received; and
- 35 (f) the nature of the allegations in the claims received.

36 Within 6 months of the effective date of this section, the chief  
37 administrative judge shall promulgate any rules necessary to effectuate  
38 the provisions of this section. Within 6 months of the effective date  
39 of this section, the chief judge of the court of appeals shall make all  
40 appointments of members of the commission.

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

44 (b) Notwithstanding the provisions of subdivision (a) of this section,  
45 with respect to all civil claims or causes of action brought by any  
46 person for physical, psychological or other injury or condition suffered  
47 by such person as a result of conduct which would constitute a sex  
48 offense as defined in article one hundred thirty of the penal law  
49 committed against such person who was less than eighteen years of age,  
50 incest as defined in section 255.25, 255.26 or 255.27 of the penal law  
51 committed against such person who was less than eighteen years of age,  
52 the use of such person in a sexual performance as defined in section  
53 263.05 of the penal law committed against such person who was less than  
54 seventeen years of age, or a predecessor statute that prohibited such  
55 conduct at the time of the act, such action may be commenced at any  
56 time.

§ 3. Paragraph (f) of subdivision 3 of section 30.10 of the criminal procedure law, as separately amended by chapters 3 and 320 of the laws of 2006, is amended to read as follows:

(f) ~~[For purposes of a]~~ A prosecution involving a ~~[sexual]~~ sex offense as defined in article one hundred thirty of the penal law, other than a ~~[sexual]~~ sex offense delineated in paragraph (a) of subdivision two of this section, committed against a child less than eighteen years of age, incest in the first, second or third degree as defined in sections 255.27, 255.26 and 255.25 of the penal law committed against a child less than eighteen years of age, or use of a child in a sexual performance as defined in section 263.05 of the penal law~~[, the period of limitation shall not begin to run until the child has reached the age of eighteen or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier]~~ may be commenced at any time.

§ 4. Section 10 of the court of claims act is amended by adding a new subdivision 3-c to read as follows:

3-c. Notwithstanding any other provisions of law to the contrary, including any other subdivision of this section, requiring as a condition precedent to commencement of an action or special proceeding that a notice of claim be filed or presented, any cause of action brought by any person against an officer or employee of the state for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute a sex offense as defined in article one hundred thirty of the penal law committed against such person who was less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against such person who was less than eighteen years of age, the use of such person in a sexual performance as defined in section 263.05 of the penal law committed against such person who was less than seventeen years of age, or a predecessor statute that prohibited such conduct at the time of the act, may be commenced at any time.

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

5. Notwithstanding any other provisions of law to the contrary, including any other subdivision of this section, section fifty-e of this article, section thirty-eight hundred thirteen of the education law, and the provisions of any general, special or local law or charter requiring as a condition precedent to commencement of an action or special proceeding that a notice of claim be filed or presented, any cause of action brought by any person against a city, county, town, village, fire district or school district for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute a sex offense as defined in article one hundred thirty of the penal law committed against such person who was less than eighteen years of age, incest as defined in section 255.25, 255.26 or 255.27 of the penal law committed against such person who was less than eighteen years of age, the use of such person in a sexual performance as defined in section 263.05 of the penal law committed against such person who was less than seventeen years of age, or a predecessor statute that prohibited such conduct at the time of the act, may be commenced at any time.

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

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

3 § 7. This act shall take effect immediately; provided that section one  
4 of this act shall expire and be deemed repealed 3 years after such date  
5 or upon the date a determination has been made on all claims submitted  
6 pursuant to such section, whichever shall be later. Provided that the  
7 chief administrative judge shall notify the legislative bill drafting  
8 commission of the date upon which a determination has been made on all  
9 claims submitted pursuant to section one of this act in order that the  
10 commission may maintain an accurate and timely effective data base of  
11 the official text of the laws of the state of New York in furtherance of  
12 effectuating the provisions of section 44 of the legislative law and  
13 section 70-b of the public officers law.