

STATE OF NEW YORK

S. 2440

A. 2683

2019-2020 Regular Sessions

SENATE - ASSEMBLY

January 24, 2019

IN SENATE -- Introduced by Sens. HOYLMAN, STEWART-COUSINS, ADDABBO, BAILEY, BENJAMIN, BIAGGI, BRESLIN, BROOKS, CARLUCCI, COMRIE, GAUGHRAN, GIANARIS, GOUNARDES, HARCKHAM, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MARTINEZ, MAY, MAYER, METZGER, MONTGOMERY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

IN ASSEMBLY -- Introduced by M. of A. L. ROSENTHAL, DINOWITZ, HEASTIE, PEOPLES-STOKES, ENGLEBRIGHT, GUNTHER, OTIS, JAFFEE, STIRPE, SIMOTAS, GALEF, MOSLEY, LIFTON, BARRETT, PAULIN, ARROYO, WALKER, WEPRIN, BICHOTTE, SIMON, BLAKE, CAHILL, SEAWRIGHT, BARRON, BUCHWALD, BRONSON, HEVESI, HYNDMAN, ORTIZ, NOLAN, JONES, CARROLL, RIVERA, GLICK, NIOU, DE LA ROSA, PRETLOW, GOTTFRIED, D'URSO, VANEL, TITUS, JEAN-PIERRE, FERNANDEZ, BENEDETTO, CRUZ, EPSTEIN, FRONTUS, GRIFFIN, JACOBSON, QUART, REYES, RICHARDSON, ROMEO, RYAN, SAYEGH, BURKE, STECK -- 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

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

LBD08627-03-9

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

Section 1. 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 prosecution involving a sexual offense as defined in article one hundred thirty of the penal law, other than a sexual 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~~ twenty-three or the offense is reported to a law enforcement agency or statewide central register of child abuse and maltreatment, whichever occurs earlier.

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

(b) Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, with respect to all civil claims or causes of action brought by any person for physical, psychological or other injury or condition suffered by such person as a result of conduct which would constitute a sexual 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 255.27, 255.26 or 255.25 of the penal law committed against such person who was less than eighteen years of age, or the use of such person in a sexual performance as defined in section 263.05 of the penal law, or a predecessor statute that prohibited such conduct at the time of the act, which conduct was committed against such person who was less than eighteen years of age, such action may be commenced, against any party whose intentional or negligent acts or omissions are alleged to have resulted in the commission of said conduct, on or before the plaintiff or infant plaintiff reaches the age of fifty-five years. In any such claim or action, in addition to any other defense and affirmative defense that may be available in accordance with law, rule or the common law, to the extent that the acts alleged in such action are of the type described in subdivision one of section 130.30 of the penal law or subdivision one of section 130.45 of the penal law, the affirmative defenses set forth, respectively, in the closing paragraph of such sections of the penal law shall apply.

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

§ 214-g. Certain child sexual abuse cases. Notwithstanding any provision of law which imposes a period of limitation to the contrary and the provisions of any other law pertaining to the filing of a notice of claim or a notice of intention to file a claim as a condition precedent to commencement of an action or special proceeding, every civil claim or cause of action brought against any party alleging intentional or negligent acts or omissions by a person for physical, psychological, or other injury or condition suffered as a result of conduct which would

1 constitute a sexual offense as defined in article one hundred thirty of
2 the penal law committed against a child less than eighteen years of age,
3 incest as defined in section 255.27, 255.26 or 255.25 of the penal law
4 committed against a child less than eighteen years of age, or the use of
5 a child in a sexual performance as defined in section 263.05 of the
6 penal law, or a predecessor statute that prohibited such conduct at the
7 time of the act, which conduct was committed against a child less than
8 eighteen years of age, which is barred as of the effective date of this
9 section because the applicable period of limitation has expired, and/or
10 the plaintiff previously failed to file a notice of claim or a notice of
11 intention to file a claim, is hereby revived, and action thereon may be
12 commenced not earlier than six months after, and not later than one year
13 and six months after the effective date of this section. In any such
14 claim or action: (a) in addition to any other defense and affirmative
15 defense that may be available in accordance with law, rule or the common
16 law, to the extent that the acts alleged in such action are of the type
17 described in subdivision one of section 130.30 of the penal law or
18 subdivision one of section 130.45 of the penal law, the affirmative
19 defenses set forth, respectively, in the closing paragraph of such
20 sections of the penal law shall apply; and (b) dismissal of a previous
21 action, ordered before the effective date of this section, on grounds
22 that such previous action was time barred, and/or for failure of a party
23 to file a notice of claim or a notice of intention to file a claim,
24 shall not be grounds for dismissal of a revival action pursuant to this
25 section.

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

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

30 § 5. Subdivision 8 of section 50-e of the general municipal law, as
31 amended by chapter 24 of the laws of 1988, is amended to read as
32 follows:

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

38 (b) This section shall not apply to any claim made for physical,
39 psychological, or other injury or condition suffered as a result of
40 conduct which would constitute a sexual offense as defined in article
41 one hundred thirty of the penal law committed against a child less than
42 eighteen years of age, incest as defined in section 255.27, 255.26 or
43 255.25 of the penal law committed against a child less than eighteen
44 years of age, or the use of a child in a sexual performance as defined
45 in section 263.05 of the penal law committed against a child less than
46 eighteen years of age.

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

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

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

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

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

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

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

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

39 § 219-c. Crimes involving sexual assault and the sexual abuse of
40 minors; judicial training. The office of court administration shall
41 provide training for judges and justices with respect to crimes involv-
42 ing sexual assault, and the sexual abuse of minors.

43 § 10. The judiciary law is amended by adding a new section 219-d to
44 read as follows:

45 § 219-d. Rules reviving certain actions; sexual offenses against chil-
46 dren. The chief administrator of the courts shall promulgate rules for
47 the timely adjudication of revived actions brought pursuant to section
48 two hundred fourteen-g of the civil practice law and rules.

49 § 11. The provisions of this act shall be severable, and if any
50 clause, sentence, paragraph, subdivision or part of this act shall be
51 adjudged by any court of competent jurisdiction to be invalid, such
52 judgment shall not affect, impair, or invalidate the remainder thereof,
53 but shall be confined in its operation to the clause, sentence, para-
54 graph, subdivision or part thereof directly involved in the controversy
55 in which such judgment shall have been rendered.

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