

Management Alert



New Jersey Legislation Extends Statute of Limitations to Bring Child Sex Abuse Claims

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Seyfarth Synopsis: The State of New Jersey passed legislation which significantly extends the statute of limitations for sexual abuse claims and creates a two-year filing window for sexual abuse claims that would otherwise be time-barred by the statute of limitations.

New Jersey has just become the latest state to pass legislation that expands the statute of limitations for filing civil sex abuse lawsuits, giving victims more time to sue their accusers and organizations that happen to be affiliated with them.

Described as an “Act concerning certain civil actions alleging sexual abuse,” Senate measure S477 passed the State Senate with a 32 to 1 vote on March 14, 2019. On March 25, 2019, the Bill then passed the New Jersey State Assembly with a 71-0 vote with five abstentions. On May 13, 2019, the Bill was signed into law by New Jersey Governor Phil Murphy who had expressed support for the proposed legislation and vowed to sign it into law.

This controversial legislation was at least a decade in the making after facing vigorous opposition from religious groups. The new legislation significantly expands the ability of individuals to pursue civil claims against their attackers and the entities that allegedly allowed the assaults to occur. Previously, New Jersey allowed minor victims of sexual abuse only two years from the later of the date of their eighteenth birthday, or the date the victim learned of their injury and its causal relationship to the sexual misconduct, to file suit. The Act now allows child victims of childhood sexual abuse to file lawsuits up until the time they turn 55 years old, or seven years from the date they became aware of the abuse, whichever is later. It also allows adult victims of sexual abuse, whatever their age, to bring suit within seven years from the time of their discovery of the abuse. It also gives victims who were previously barred from filing claims, because the statute of limitations had lapsed, a two-year window to now file their claims. The effective date of the Act is December 1, 2019.

Importantly, the Act also now permits lawsuits against organizations that were historically immune from suit by amending the Charitable Immunity Act N.J.S.A. 2A:53A-7 to expose nonprofit organizations to retroactive liability for willful, wanton or grossly negligent acts resulting in sex abuse. The Act also retroactively applies an exception to the Charitable Immunity Act so that nonprofit organizations can face liability for acts of simple negligence in the hiring, supervision or retention of an employee agent or server for servant that led to the sexual abuse against a minor.

The Act also creates a carve-out to the New Jersey Tort Claims Act N.J.S.A. 59:1-1, stripping public entities of immunity from sexual abuse lawsuits, such that they can now be held liable as if they were private organizations. This means public schools, and not-for-profit private schools, will now find themselves named as defendants in sex abuse claims, in what is a striking departure from well-established New Jersey law.

However, the Act has certain limitations. Notably, it will not permit lawsuits alleging child sex abuse to proceed as a class action, or be settled privately as a class, a limitation which may make any lawsuits filed be more manageable to administer, but which will require many victims to come forward and file individual lawsuits seeking redress.

Much like New York, which passed similar legislation in early 2019 entitled “The Child Victim Act,” the New Jersey legislation was passed in the context of the newfound momentum for victim’s rights stemming from the #MeToo Movement, the detailed widespread sexual abuse of the Catholic Church in New York, New Jersey, and in a Grand Jury Report in neighboring Pennsylvania which accused 300 clergy members of sexual assault, where certain of these priests resided in New Jersey.

What Does This Mean for Your Institution?

Simply stated, the ramifications of the legislation can be enormous. Any educational, religious or civic organization that cares for children, such as a school camp or day care facility, will be subject to this new legislation. As a result, a significant number of victims may now come forward, recognizing that they have broad-based legislative and public support, and will not face the immediate dismissal of their claims on statute of limitations grounds. While many wrongdoers have gone to their graves without proper punishment, their employers will be left to answer for their wrongdoing, accused of turning a blind eye to these victims when in their care, and negligently supervising or retaining the wrongdoer.

As an institution providing services to children, your organization may be subject to a public lawsuit even if it is currently unaware of any historical issues. The defense of such cases is often extremely difficult as memories have faded and witnesses have disappeared or died. Evidence such as student records, medical records, witnesses to the abuse, individuals who might have received the victim’s outcry, and even the wrongdoers themselves, may be long gone. In many respects, the lack of any evidence, other than the statement of the victim, can make an institution particularly vulnerable when such claims are filed.

The new legislation does not alter the burden of proof as a civil case: liability can still be established by a mere preponderance of the evidence.

The creation of a two-year window to assert claims that previously were, or would have been, dismissed under the former statute will likely open the floodgates as to the initiation of child sex abuse cases for conduct that occurred decades ago. It will be extremely difficult to predict how many people chose to initiate lawsuits during this “look back” period. In some cases, institutions unable to assess what might be an overwhelming horizon of liability may face financial uncertainty or distress.

What Are the Next Steps?

Your institution will have until December 1, 2019 to best prepare for the Act’s impending impact. While an alleged victim will now have a two year window in which to revive his or her claim, the victim cannot actually commence their lawsuit until the effective date. Your institution’s consideration of the ramifications of the law is a necessary and critical first step in addressing this potential problem. Take this time to prepare before the expected floodgates open.

Determine Your Potential Risk:

- Have you ever received a complaint or other information suggesting sexual abuse may have occurred? Have you dealt with such information in a reasonable and prudent manner? If your institution had no knowledge of the abuse in real time, it should not be liable for being willful, wanton, or negligent supervision of an abuser in its employ.
- If you are aware of possible victims, or rumors of possible victims that may come forward, what steps have you taken to investigate those claims? Who might potential plaintiffs be? What is their risk tolerance for litigation? Now is the time to investigate those claims, and perhaps avoid a headline and a lawsuit.

- Are there lawsuits against your organization that were dismissed on statute of limitations grounds. Be aware that they may now be resurrected under the Act's provision allowing for such actions to be revived for a period of two years following the effective date.
- Does your institution have insurance policies that may be used to fund the defense or settlement of such claims? Are your carriers on notice of the potential ramifications to your organization? Do you still have copies of all applicable policies? Now is the time to find out.
- If lawsuits commence, do you still have access to supporting witnesses or relevant documents? Is the alleged abuser still alive? Is he/she still affiliated or with or employed by your institution? In short, is this a lawsuit you can defend?
- Consider what could be done now to address any concerns and avoid potential litigation. Conducting outreach to victims, offering truth and reconciliation efforts, perhaps even earmarking funds for counseling may be a good starting point. Consider the creation of a victims' fund that can administer compensation to those victims that seek monetary relief but would rather not file a public lawsuit.

Conclusion

Sexual abuse of children has had lasting impacts in its victims in countless ways. The enactment of this sweeping legislation addresses the conduct in an attempt to stop its proliferation and compensate its victims. While your institution has a responsibility to the children it serves, it must also take reasonable and prudent steps to prepare itself to respond to any complaints or lawsuits that may now be brought. It needs to now consider allocation of resources and the extent to which funds can be used for today's objectives, while reserving funds to pay for the possibility of historical claims. These are not easy decisions to make and they require careful consideration. One thing is for certain however: the Act is now the law in New Jersey, which means that these cases will almost certainly be filed, and an institutional response will be required.

Seyfarth Shaw would be happy to discuss these various ideas and alternatives with you in more detail, and share with you our collective wisdom.

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