

6575

2017-2018 Regular Sessions

I N S E N A T E

June 5, 2017

Introduced by Sens. HOYLMAN, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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.