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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

NJ extends statute of limitations, allows sex abuse victims much more time to sue
northjersey.com (Published as northjersey.com (NJ)) - May 13, 2019

Governor signs bill easing limit on sex abuse lawsuits
Associated Press State Wire: New Jersey (NJ) - May 13, 2019

SEX ABUSE VICTIMS RECEIVE MORE TIME TO SUE INSTITUTIONS
Record, The (Hackensack, NJ) - May 14, 2019

A measure of justice for sex abuse victims Law
Star-Ledger, The (Newark, NJ) - May 14, 2019

New law extends lawsuit limitations Nonprofits Sexual assault victims will soon be able to sue nonprofits that
employed their rapists
Times, The (Trenton, NJ) - May 14, 2019

Bill would clarify standard for sex abuse cases against public entities,
New Jersey Law Journal, May 20, 2019

RWH/CL

§§2,9,10 -
C.2A:14-2a to
2A:14-2c
§7 - C.59:2-1.3
§10 - Note

P.L. 2019, CHAPTER 120, *approved May 13, 2019*
Senate Committee Substitute for
Senate, No. 477

1 AN ACT concerning certain civil actions, and amending and
2 supplementing various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2A:14-2 is amended to read as follows:

8 2A:14-2. a. **【Every】** Except as otherwise provided by law,
9 every action at law for an injury to the person caused by the
10 wrongful act, neglect or default of any person within this State shall
11 be commenced within two years next after the cause of any such
12 action shall have accrued; except that an action by or on behalf of a
13 minor that has accrued for medical malpractice for injuries
14 sustained at birth shall be commenced prior to the minor's 13th
15 birthday.

16 b. In the event that an action by or on behalf of a minor that has
17 accrued for medical malpractice for injuries sustained at birth is not
18 commenced by the minor's parent or guardian prior to the minor's
19 12th birthday, the minor or a person 18 years of age or older
20 designated by the minor to act on the minor's behalf may commence
21 such an action. For this purpose, the minor or designated person
22 may petition the court for the appointment of a guardian ad litem to
23 act on the minor's behalf.

24 (cf: P.L.2004, c.17, s.3)

25
26 2. (New section) a. (1) Every action at law for an injury
27 resulting from the commission of sexual assault, any other crime of
28 a sexual nature, a prohibited sexual act as defined in section 2 of
29 P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1
30 of P.L.1992, c.109 (C.2A:61B-1) against a minor under the age of
31 18 that occurred prior to, on or after the effective date of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) shall be
33 commenced within 37 years after the minor reaches the age of
34 majority, or within seven years from the date of reasonable
35 discovery of the injury and its causal relationship to the act,
36 whichever date is later.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (2) To the extent applicable, any action for an injury that
2 occurred prior to the effective date of P.L. , c. (C.) (pending
3 before the Legislature as this bill) shall be subject to the provisions
4 of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and
5 P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. ,
6 c. (C.) (pending before the Legislature as this bill).

7 b. (1) Every action at law for an injury resulting from the
8 commission of sexual assault or any other crime of a sexual nature
9 against a person 18 years of age or older that occurred prior to, on
10 or after the effective date of P.L. , c. (C.) (pending before
11 the Legislature as this bill) shall be commenced within seven years
12 from the date of reasonable discovery of the injury and its causal
13 relationship to the act.

14 (2) To the extent applicable, any action for an injury that
15 occurred prior to the effective date of P.L. , c. (C.) (pending
16 before the Legislature as this bill) shall be subject to the provisions
17 of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7), as
18 amended by P.L. , c. (C.) (pending before the Legislature as
19 this bill).

20 Nothing in this section is intended to preclude the court from
21 finding that the statute of limitations was tolled in an action because
22 of the plaintiff's mental state, physical or mental disability, duress
23 by the defendant, or any other equitable grounds. Such a finding
24 shall be made after a plenary hearing. The court may order an
25 independent psychiatric evaluation of the plaintiff in order to assist
26 in the determination as to whether the statute of limitations was
27 tolled.

28 c. (1) Every action at law for an injury that is commenced
29 pursuant to this section shall proceed on an individual basis, and not
30 proceed on behalf of a class in a class action, due to the particular
31 circumstances, source of injury and its discovery, and damages
32 relating to each occurrence or occurrences of sexual assault, any
33 other crime of a sexual nature, a prohibited sexual act as defined in
34 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined
35 in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor
36 under the age of 18 or a person 18 years of age or older.

37 (2) Any private, contractual arrangement intending to settle
38 claims for occurrences described in paragraph (1) of this subsection
39 on a class basis is against public policy and shall be void and
40 unenforceable.

41
42 3. Section 6 of P.L.1992, c.7 (C.2A:30B-6) is amended to read
43 as follows:

44 6. **【Every】** In any action **【brought pursuant to this act】** for
45 injury based on P.L.1992, c.7 (C.2A:30B-1 et seq.), the cause of
46 action shall **【be commenced within two years after the child**
47 reaches the age of majority】 accrue at the time of reasonable

1 discovery of the injury and its causal relationship to the act. The
2 action shall be subject to the statute of limitations set forth in
3 section 2 of P.L. , c. (C.) (pending before the Legislature as
4 this bill).
5 (cf: P.L.1992, c.7, s.6)

6
7 4. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to
8 read as follows:

9 1. a. As used in this act:

10 (1) "Sexual abuse" means an act of sexual contact or sexual
11 penetration between a child under the age of 18 years and an adult.
12 A parent, resource family parent, guardian or other person standing
13 in loco parentis **【within the household】** who knowingly permits or
14 acquiesces in sexual abuse by any other person also commits sexual
15 abuse, except that it is an affirmative defense if the parent, resource
16 family parent, guardian or other person standing in loco parentis
17 was subjected to, or placed in, reasonable fear of physical or sexual
18 abuse by the other person so as to undermine the person's ability to
19 protect the child.

20 (2) "Sexual contact" means an intentional touching by the victim
21 or actor, either directly or through clothing, of the victim's or actor's
22 intimate parts for the purpose of sexually arousing or sexually
23 gratifying the actor. Sexual contact of the adult with himself must
24 be in view of the victim whom the adult knows to be present.

25 (3) "Sexual penetration" means vaginal intercourse, cunnilingus,
26 fellatio or anal intercourse between persons or insertion of the hand,
27 finger or object into the anus or vagina either by the adult or upon
28 the adult's instruction.

29 (4) "Intimate parts" means the following body parts: sexual
30 organs, genital area, anal area, inner thigh, groin, buttock or breast
31 of a person.

32 (5) "Injury or illness" includes psychological injury or illness,
33 whether or not accompanied by physical injury or illness.

34 b. In any civil action for injury or illness based on sexual
35 abuse, the cause of action shall accrue at the time of reasonable
36 discovery of the injury and its causal relationship to the act of
37 sexual abuse. Any such action shall be **【brought within two years**
38 **after reasonable discovery】** subject to the statute of limitations set
39 forth in section 2 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41 c. **【Nothing in this act is intended to preclude the court from**
42 **finding that the statute of limitations was tolled in a case because of**
43 **the plaintiff's mental state, duress by the defendant, or any other**
44 **equitable grounds. Such a finding shall be made after a plenary**
45 **hearing. At the plenary hearing the court shall hear all credible**
46 **evidence and the Rules of Evidence shall not apply, except for Rule**
47 **403 or a valid claim of privilege. The court may order an**

1 independent psychiatric evaluation of the plaintiff in order to assist
2 in the determination as to whether the statute of limitations was
3 tolled.】 (Deleted by amendment, P.L. , c.) (pending before the
4 Legislature as this bill)

5 d. (1) Evidence of the victim's previous sexual conduct shall
6 not be admitted nor reference made to it in the presence of a jury
7 except as provided in this subsection. When the defendant seeks to
8 admit such evidence for any purpose, the defendant must apply for
9 an order of the court before the trial or preliminary hearing, except
10 that the court may allow the motion to be made during trial if the
11 court determines that the evidence is newly discovered and could
12 not have been obtained earlier through the exercise of due diligence.
13 After the application is made, the court shall conduct a hearing in
14 camera to determine the admissibility of the evidence. If the court
15 finds that evidence offered by the defendant regarding the sexual
16 conduct of the victim is relevant and that the probative value of the
17 evidence offered is not outweighed by its collateral nature or by the
18 probability that its admission will create undue prejudice, confusion
19 of the issues, or unwarranted invasion of the privacy of the victim,
20 the court shall enter an order setting forth with specificity what
21 evidence may be introduced and the nature of the questions which
22 shall be permitted, and the reasons why the court finds that such
23 evidence satisfies the standards contained in this section. The
24 defendant may then offer evidence under the order of the court.

25 (2) In the absence of clear and convincing proof to the contrary,
26 evidence of the victim's sexual conduct occurring more than one
27 year before the date of the offense charged is presumed to be
28 inadmissible under this section.

29 (3) Evidence of the victim's previous sexual conduct shall not be
30 considered relevant unless it is material to proving that the source
31 of semen, pregnancy or disease is a person other than the defendant.
32 For the purposes of this subsection, "sexual conduct" shall mean
33 any conduct or behavior relating to sexual activities of the victim,
34 including but not limited to previous or subsequent experience of
35 sexual penetration or sexual contact, use of contraceptives, living
36 arrangement and life style.

37 e. (1) The court may, on motion and after conducting a hearing
38 in camera, order the taking of the testimony of a victim on closed
39 circuit television at the trial, out of the view of the jury, defendant,
40 or spectators upon making findings as provided in paragraph (2) of
41 this subsection.

42 (2) An order under this section may be made only if the court
43 finds that the victim is 16 years of age or younger and that there is a
44 substantial likelihood that the victim would suffer severe emotional
45 or mental distress if required to testify in open court. The order
46 shall be specific as to whether the victim will testify outside the
47 presence of spectators, the defendant, the jury, or all of them and

1 shall be based on specific findings relating to the impact of the
2 presence of each.

3 (3) A motion seeking closed circuit testimony under paragraph
4 (1) of this subsection may be filed by:

5 (a) The victim or the victim's attorney, parent or legal guardian;

6 (b) The defendant or the defendant's counsel; or

7 (c) The trial judge on the judge's own motion.

8 (4) The defendant's counsel shall be present at the taking of
9 testimony in camera. If the defendant is not present, he and his
10 attorney shall be able to confer privately with each other during the
11 testimony by a separate audio system.

12 (5) If testimony is taken on closed circuit television pursuant to
13 the provisions of this act, a stenographic recording of that testimony
14 shall also be required. A typewritten transcript of that testimony
15 shall be included in the record on appeal. The closed circuit
16 testimony itself shall not constitute part of the record on appeal
17 except on motion for good cause shown.

18 f. (1) The name, address, and identity of a victim or a
19 defendant shall not appear on the complaint or any other public
20 record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their
21 place initials or a fictitious name shall appear.

22 (2) Any report, statement, photograph, court document,
23 complaint or any other public record which states the name, address
24 and identity of a victim shall be confidential and unavailable to the
25 public.

26 (3) The information described in this subsection shall remain
27 confidential and unavailable to the public unless the victim consents
28 to the disclosure or if the court, after a hearing, determines that
29 good cause exists for the disclosure. The hearing shall be held after
30 notice has been made to the victim and to the defendant and the
31 defendant's counsel.

32 (4) Nothing contained herein shall prohibit the court from
33 imposing further restrictions with regard to the disclosure of the
34 name, address, and identity of the victim when it deems it necessary
35 to prevent trauma or stigma to the victim.

36 g. In accordance with R.5:3-2 of the Rules Governing the
37 Courts of the State of New Jersey, the court may, on its own or a
38 party's motion, direct that any proceeding or portion of a proceeding
39 involving a victim sixteen years of age or younger be conducted in
40 camera.

41 h. A plaintiff who prevails in a civil action pursuant to this act
42 shall be awarded damages in the amount of \$10,000, plus
43 reasonable attorney's fees, or actual damages, whichever is greater.
44 Actual damages shall consist of compensatory and punitive
45 damages and costs of suit, including reasonable attorney's fees.
46 Compensatory damages may include, but are not limited to,
47 damages for pain and suffering, medical expenses, emotional

1 trauma, diminished childhood, diminished enjoyment of life, costs
2 of counseling, and lost wages.
3 (cf: P.L.2004, c.130, s.10)
4

5 5. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to
6 read as follows:

7 1. a. No nonprofit corporation, society or association
8 organized exclusively for religious, charitable or educational
9 purposes or its trustees, directors, officers, employees, agents,
10 servants or volunteers shall, except as is hereinafter set forth, be
11 liable to respond in damages to any person who shall suffer damage
12 from the negligence of any agent or servant of such corporation,
13 society or association, where such person is a beneficiary, to
14 whatever degree, of the works of such nonprofit corporation,
15 society or association; provided, however, that such immunity from
16 liability shall not extend to any person who shall suffer damage
17 from the negligence of such corporation, society, or association or
18 of its agents or servants where such person is one unconcerned in
19 and unrelated to and outside of the benefactions of such
20 corporation, society or association.

21 Nothing in this subsection shall be deemed to grant immunity to
22 any health care provider, in the practice of his profession, who is a
23 compensated employee, agent or servant of any nonprofit
24 corporation, society or association organized exclusively for
25 religious, charitable or educational purposes.

26 b. No nonprofit corporation, society or association organized
27 exclusively for hospital purposes or its trustees, directors, officers
28 or volunteers shall, except as is hereinafter set forth, be liable to
29 respond in damages to any person who shall suffer damage from the
30 negligence of any agent or servant of such corporation, society or
31 association, where such person is a beneficiary, to whatever degree,
32 of the works of such nonprofit corporation, society or association;
33 provided, however, that such immunity from liability shall not
34 extend to any person who shall suffer damage from the negligence
35 of such corporation, society, or association or of its agents or
36 servants where such person is one unconcerned in and unrelated to
37 and outside of the benefactions of such corporation, society or
38 association; but nothing herein contained shall be deemed to exempt
39 the agent , employee or servant individually from their liability for
40 any such negligence.

41 c. Nothing in this section shall be deemed to grant immunity
42 to: (1) any nonprofit corporation, society or association organized
43 exclusively for religious, charitable, educational or hospital
44 purposes, or its trustee, director, officer, employee, agent, servant or
45 volunteer, causing damage by a willful, wanton or grossly negligent
46 act of commission or omission, including sexual assault **[and]** , any
47 other **[crimes]** crime of a sexual nature, a prohibited sexual act as

1 defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse
2 as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); (2) any
3 trustee, director, officer, employee, agent, servant or volunteer
4 causing damage as the result of the negligent operation of a motor
5 vehicle; or (3) an independent contractor of a nonprofit corporation,
6 society or association organized exclusively for religious,
7 charitable, educational or hospital purposes.
8 (cf: P.L.1995, c.183, s.1)
9

10 6. Section 2 of P.L.2005, c.264 (C.2A:53A-7.5) is amended to
11 read as follows:

12 2. a. The provisions of this supplementary act, P.L.2005, c.264
13 (C.2A:53A-7.4 et seq.), shall apply prospectively and also shall be
14 applicable to all civil actions for which the statute of limitations has
15 not expired as of the effective date of this act, and subsequently, not
16 expired as of the effective date of P.L. , c. (C.) (pending
17 before the Legislature as this bill), including the [statutes of
18 limitation] statute of limitations set forth in N.J.S.2A:14-2, section
19 2 of P.L. , c. (C.) (pending before the Legislature as this
20 bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), [section 1 of
21 P.L.1992, c.109 (C.2A:61B-1)] or any other statute. These
22 applicable actions include but are not limited to matters filed with a
23 court that have not yet been dismissed or finally adjudicated as of
24 the effective date of this act or P.L. , c. (C.) (pending before
25 the Legislature as this bill).

26 b. Notwithstanding the provisions of subsection a. of this
27 section, the provisions of P.L.2005, c.264 (C.2A:53A-7.4 et seq.)
28 shall apply to all civil actions for an injury resulting from an act
29 that occurred prior to the effective date of P.L. , c. (C.)
30 (pending before the Legislature as this bill), and these actions shall
31 be subject to the statute of limitations set forth in section 2 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).
33 (cf: P.L.2005, c.264, s.2)
34

35 7. (New section) Notwithstanding any other provision of law
36 to the contrary, including but not limited to the "New Jersey Tort
37 Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an
38 action at law for an injury resulting from the commission of sexual
39 assault, any other crime of a sexual nature, a prohibited sexual act
40 as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual
41 abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1).
42

43 8. N.J.S.59:8-3 is amended to read as follows:

44 59:8-3. Claims for damages against public entities. **[No]** a.
45 Except as otherwise provided in this section, no action shall be
46 brought against a public entity or public employee under this act

1 unless the claim upon which it is based shall have been presented in
2 accordance with the procedure set forth in this chapter.

3 b. The procedural requirements of this chapter shall not apply
4 to an action at law for an injury resulting from the commission of
5 sexual assault, any other crime of a sexual nature, a prohibited
6 sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or
7 sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-
8 1).

9 (cf: P.L.1994, c.49, s.2)

10

11 9. (New section) a. Notwithstanding the statute of limitations
12 provisions of N.J.S.2A:14-2, section 2 of P.L. , c. (C.)
13 (pending before the Legislature as this bill), section 1 of P.L.1964,
14 c.214 (C.2A:14-2.1), or any other statute, an action at law for an
15 injury resulting from the commission of sexual assault, any other
16 crime of a sexual nature, a prohibited sexual act as defined in
17 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined
18 in section 1 of P.L.1992, c.109 (C.2A:61B-1), that occurred prior to
19 the effective date of P.L. , c. (C.) (pending before the
20 Legislature as this bill), and which action would otherwise be
21 barred through application of the statute of limitations, may be
22 commenced within two years immediately following the effective
23 date.

24 b. To the extent applicable, any action brought during the two-
25 year period pursuant to subsection a. of this section shall be subject
26 to the provisions of subsection c. of section 1 of P.L.1959, c.90
27 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as
28 amended by P.L. , c. (C.) (pending before the Legislature as
29 this bill).

30 c. (1) Every action at law for an injury that is commenced
31 pursuant to this section shall proceed on an individual basis, and not
32 proceed on behalf of a class in a class action, due to the particular
33 circumstances, source of injury and its discovery, and damages
34 relating to each occurrence or occurrences of sexual assault, any
35 other crime of a sexual nature, a prohibited sexual act as defined in
36 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined
37 in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor
38 under the age of 18 or a person 18 years of age or older.

39 (2) Any private, contractual arrangement intending to settle
40 claims for occurrences described in paragraph (1) of this subsection
41 on a class basis is against public policy and shall be void and
42 unenforceable.

43

44 10. (New section) The provisions of this amendatory and
45 supplementary act, P.L. , c. (C.) (pending before the
46 Legislature as this bill), shall take effect on December 1, 2019.

1 These provisions shall be inapplicable to any civil action governed
2 solely by the statute of limitations of another jurisdiction.

3

4

5



6

7 Extends statute of limitations in civil actions for sexual abuse
8 claims; expands categories of potential defendants in civil actions;
9 creates two-year window for parties to bring previously time-barred
10 actions based on sexual abuse.

SENATE, No. 477

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:

**Senators Weinberg, Cryan, Codey, Cunningham, Diegnan, Gill, Gopal,
Greenstein, Lagana, O'Scanlon, Rice, Ruiz, B.Smith, Stack and Turner**

SYNOPSIS

Removes statute of limitations in certain civil actions for sexual abuse;
expands categories of defendants liable in such actions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 12/4/2018)

1 AN ACT concerning certain civil actions alleging sexual abuse,
2 amending various parts of the statutory law and supplementing
3 Title 2A of the New Jersey Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. N.J.S.2A:14-2 is amended to read as follows:

9 2A:14-2. a. **Every** Except as provided in subsections b. and c.
10 of this section, every action at law for an injury to the person
11 caused by the wrongful act, neglect or default of any person within
12 this State shall be commenced within two years next after the cause
13 of any such action shall have accrued**;** except that an action by or
14 on behalf of a minor that has accrued for medical malpractice for
15 injuries sustained at birth shall be commenced prior to the minor's
16 13th birthday**].**

17 b. (1) An action by or on behalf of a minor that has accrued for
18 medical malpractice for injuries sustained at birth shall be
19 commenced prior to the minor's 13th birthday.

20 (2) In the event that an action by or on behalf of a minor that has
21 accrued for medical malpractice for injuries sustained at birth is not
22 commenced by the minor's parent or guardian prior to the minor's
23 12th birthday, the minor or a person 18 years of age or older
24 designated by the minor to act on the minor's behalf may commence
25 such an action. For this purpose, the minor or designated person
26 may petition the court for the appointment of a guardian ad litem to
27 act on the minor's behalf.

28 c. An action brought pursuant to section 1 of P.L.1992, c.109
29 (C.2A:61B-1), paragraph (1) of subsection c. of section 1 of
30 P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005, c.264
31 (C.2A:53A-7.4) may be commenced at any time.

32 (cf: P.L.2004, c.17, s.3)
33

34 2. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to
35 read as follows:

36 1. a. No nonprofit corporation, society or association organized
37 exclusively for religious, charitable or educational purposes or its
38 trustees, directors, officers, employees, agents, servants or
39 volunteers shall, except as is hereinafter set forth, be liable to
40 respond in damages to any person who shall suffer damage from the
41 negligence of any agent or servant of such corporation, society or
42 association, where such person is a beneficiary, to whatever degree,
43 of the works of such nonprofit corporation, society or association;
44 provided, however, that such immunity from liability shall not
45 extend to any person who shall suffer damage from the negligence

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 of such corporation, society, or association or of its agents or
2 servants where such person is one unconcerned in and unrelated to
3 and outside of the benefactions of such corporation, society or
4 association.

5 Nothing in this subsection shall be deemed to grant immunity to
6 any health care provider, in the practice of his profession, who is a
7 compensated employee, agent or servant of any nonprofit
8 corporation, society or association organized exclusively for
9 religious, charitable or educational purposes.

10 b. No nonprofit corporation, society or association organized
11 exclusively for hospital purposes or its trustees, directors, officers
12 or volunteers shall, except as is hereinafter set forth, be liable to
13 respond in damages to any person who shall suffer damage from the
14 negligence of any agent or servant of such corporation, society or
15 association, where such person is a beneficiary, to whatever degree,
16 of the works of such nonprofit corporation, society or association;
17 provided, however, that such immunity from liability shall not
18 extend to any person who shall suffer damage from the negligence
19 of such corporation, society, or association or of its agents or
20 servants where such person is one unconcerned in and unrelated to
21 and outside of the benefactions of such corporation, society or
22 association; but nothing herein contained shall be deemed to exempt
23 the agent, employee or servant individually from their liability for
24 any such negligence.

25 c. Nothing in this section shall be deemed to grant immunity
26 to: (1) (a) any nonprofit corporation, society or association
27 organized exclusively for religious, charitable or educational
28 purposes or its trustee, director, officer, employee, agent, servant or
29 volunteer causing damage by a willful, wanton or grossly negligent
30 act of commission or omission, including sexual assault [and] , any
31 other [crimes] crime of a sexual nature or sexual abuse as defined
32 in section 1 of P.L.1992, c.109 (C.2A:61B-1);

33 (b) any nonprofit corporation, society or association organized
34 exclusively for religious, charitable or educational purposes causing
35 damage by any negligent act resulting in the commission of sexual
36 assault, any other crime of a sexual nature or sexual abuse as
37 defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); or

38 (c) any trustee, director, officer, employee, agent, servant or
39 volunteer of a nonprofit corporation, society or association
40 organized exclusively for religious, charitable or educational
41 purposes causing damage by any negligent act resulting in the
42 commission of sexual assault, any other crime of a sexual nature or
43 sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-
44 1) if the trustee, director, officer, employee, agent, servant or
45 volunteer had a supervisory or oversight role over the person
46 committing the act of sexual assault, other crime of a sexual nature
47 or sexual abuse as defined in section 1 of P.L.1992, c.109
48 (C.2A:61B-1);

1 (2) any trustee, director, officer, employee, agent, servant or
2 volunteer causing damage as the result of the negligent operation of
3 a motor vehicle; or

4 (3) an independent contractor of a nonprofit corporation, society
5 or association organized exclusively for religious, charitable,
6 educational or hospital purposes.

7 (cf: P.L.1995, c.183, s.1)

8

9 3. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to
10 read as follows:

11 1. a. As used in this act:

12 (1) "Sexual abuse" means an act of sexual contact or sexual
13 penetration between a child under the age of 18 years and an adult.
14 A parent, resource family parent, guardian or other person
15 **【standing in loco parentis within the household】** who knowingly
16 permits or acquiesces in sexual abuse by any other person also
17 commits sexual abuse, except that it is an affirmative defense if the
18 parent, resource family parent, guardian or other person **【standing**
19 **in loco parentis】** was subjected to, or placed in, reasonable fear of
20 physical or sexual abuse by the other person so as to undermine the
21 person's ability to protect the child.

22 (2) "Sexual contact" means an intentional touching by the victim
23 or actor, either directly or through clothing, of the victim's or actor's
24 intimate parts for the purpose of sexually arousing or sexually
25 gratifying the actor. Sexual contact of the adult with himself must
26 be in view of the victim whom the adult knows to be present.

27 (3) "Sexual penetration" means vaginal intercourse, cunnilingus,
28 fellatio or anal intercourse between persons or insertion of the hand,
29 finger or object into the anus or vagina either by the adult or upon
30 the adult's instruction.

31 (4) "Intimate parts" means the following body parts: sexual
32 organs, genital area, anal area, inner thigh, groin, buttock or breast
33 of a person.

34 (5) "Injury or illness" includes psychological injury or illness,
35 whether or not accompanied by physical injury or illness.

36 b. In any civil action for damages for injury or illness based on
37 sexual abuse, the **【cause of】** action **【shall accrue at the time of**
38 **reasonable discovery of the injury and its causal relationship to the**
39 **act of sexual abuse. Any such action shall be brought within two**
40 **years after reasonable discovery】** may be commenced at any time.

41 c. **【Nothing in this act is intended to preclude the court from**
42 **finding that the statute of limitations was tolled in a case because of**
43 **the plaintiff's mental state, duress by the defendant, or any other**
44 **equitable grounds. Such a finding shall be made after a plenary**
45 **hearing. At the plenary hearing the court shall hear all credible**
46 **evidence and the Rules of Evidence shall not apply, except for Rule**
47 **403 or a valid claim of privilege. The court may order an**

1 independent psychiatric evaluation of the plaintiff in order to assist
2 in the determination as to whether the statute of limitations was
3 tolled.] Deleted by amendment, P.L. , c. (pending before the
4 Legislature as this bill)

5 d. (1) Evidence of the victim's previous sexual conduct shall
6 not be admitted nor reference made to it in the presence of a jury
7 except as provided in this subsection. When the defendant seeks to
8 admit such evidence for any purpose, the defendant must apply for
9 an order of the court before the trial or preliminary hearing, except
10 that the court may allow the motion to be made during trial if the
11 court determines that the evidence is newly discovered and could
12 not have been obtained earlier through the exercise of due diligence.
13 After the application is made, the court shall conduct a hearing in
14 camera to determine the admissibility of the evidence. If the court
15 finds that evidence offered by the defendant regarding the sexual
16 conduct of the victim is relevant and that the probative value of the
17 evidence offered is not outweighed by its collateral nature or by the
18 probability that its admission will create undue prejudice, confusion
19 of the issues, or unwarranted invasion of the privacy of the victim,
20 the court shall enter an order setting forth with specificity what
21 evidence may be introduced and the nature of the questions which
22 shall be permitted, and the reasons why the court finds that such
23 evidence satisfies the standards contained in this section. The
24 defendant may then offer evidence under the order of the court.

25 (2) In the absence of clear and convincing proof to the contrary,
26 evidence of the victim's sexual conduct occurring more than one
27 year before the date of the offense charged is presumed to be
28 inadmissible under this section.

29 (3) Evidence of the victim's previous sexual conduct shall not be
30 considered relevant unless it is material to proving that the source
31 of semen, pregnancy or disease is a person other than the defendant.
32 For the purposes of this subsection, "sexual conduct" shall mean
33 any conduct or behavior relating to sexual activities of the victim,
34 including but not limited to previous or subsequent experience of
35 sexual penetration or sexual contact, use of contraceptives, living
36 arrangement and life style.

37 e. (1) The court may, on motion and after conducting a hearing
38 in camera, order the taking of the testimony of a victim on closed
39 circuit television at the trial, out of the view of the jury, defendant,
40 or spectators upon making findings as provided in paragraph (2) of
41 this subsection.

42 (2) An order under this section may be made only if the court
43 finds that the victim is 16 years of age or younger and that there is a
44 substantial likelihood that the victim would suffer severe emotional
45 or mental distress if required to testify in open court. The order
46 shall be specific as to whether the victim will testify outside the
47 presence of spectators, the defendant, the jury, or all of them and

1 shall be based on specific findings relating to the impact of the
2 presence of each.

3 (3) A motion seeking closed circuit testimony under paragraph
4 (1) of this subsection may be filed by:

5 (a) The victim or the victim's attorney, parent or legal guardian;

6 (b) The defendant or the defendant's counsel; or

7 (c) The trial judge on the judge's own motion.

8 (4) The defendant's counsel shall be present at the taking of
9 testimony in camera. If the defendant is not present, he and his
10 attorney shall be able to confer privately with each other during the
11 testimony by a separate audio system.

12 (5) If testimony is taken on closed circuit television pursuant to
13 the provisions of this act, a stenographic recording of that testimony
14 shall also be required. A typewritten transcript of that testimony
15 shall be included in the record on appeal. The closed circuit
16 testimony itself shall not constitute part of the record on appeal
17 except on motion for good cause shown.

18 f. (1) The name, address, and identity of a victim or a
19 defendant shall not appear on the complaint or any other public
20 record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their
21 place initials or a fictitious name shall appear.

22 (2) Any report, statement, photograph, court document,
23 complaint or any other public record which states the name, address
24 and identity of a victim shall be confidential and unavailable to the
25 public.

26 (3) The information described in this subsection shall remain
27 confidential and unavailable to the public unless the victim consents
28 to the disclosure or if the court, after a hearing, determines that
29 good cause exists for the disclosure. The hearing shall be held after
30 notice has been made to the victim and to the defendant and the
31 defendant's counsel.

32 (4) Nothing contained herein shall prohibit the court from
33 imposing further restrictions with regard to the disclosure of the
34 name, address, and identity of the victim when it deems it necessary
35 to prevent trauma or stigma to the victim.

36 g. In accordance with R.5:3-2 of the Rules Governing the
37 Courts of the State of New Jersey, the court may, on its own or a
38 party's motion, direct that any proceeding or portion of a proceeding
39 involving a victim sixteen years of age or younger be conducted in
40 camera.

41 h. A plaintiff who prevails in a civil action pursuant to this act
42 shall be awarded damages in the amount of \$10,000 plus reasonable
43 attorney's fees, or actual damages, whichever is greater. Actual
44 damages shall consist of compensatory and punitive damages and
45 costs of suit, including reasonable attorney's fees. Compensatory
46 damages may include, but are not limited to, damages for pain and
47 suffering, medical expenses, emotional trauma, diminished

1 childhood, diminished enjoyment of life, costs of counseling, and
2 lost wages.

3 (cf: P.L.2004, c.130, s.10)

4

5 4. (New section) Notwithstanding any other provision of law
6 to the contrary, including but not limited to the "New Jersey Tort
7 Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an
8 action for damages brought under the provisions of section 1 of
9 P.L.1992, c.109 (C.2A:61B-1), paragraph (1) of subsection c. of
10 section 1 of P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005,
11 c.264 (C.2A:53A-7.4).

12

13 5. (New section) The provisions of this amendatory and
14 supplementary act, P.L. , c. (C.) (pending before the
15 Legislature as this bill) shall be inapplicable to any civil action
16 governed by the statute of limitations of another jurisdiction.

17

18 6. (New section) a. The provisions of this amendatory and
19 supplementary act, P.L. , c. (C.) (pending before the
20 Legislature as this bill), shall apply to any action filed on or after
21 the effective date, including but not limited to matters where the
22 statute of limitations has expired and matters filed with a court that
23 have not yet been dismissed with prejudice or finally adjudicated as
24 of the effective date.

25 b. In addition, for a period of two years following the effective
26 date, the provisions of this act shall also revive any action
27 previously filed that was dismissed on grounds that the applicable
28 statute of limitations had expired, but shall not revive any action
29 previously dismissed on any other grounds or revive any action that
30 has been finally adjudicated.

31

32 7. This act shall take effect immediately.

33

34

35

STATEMENT

36

37 This bill would eliminate the statute of limitations in civil
38 actions for sexual abuse, expand the categories of defendants who
39 are potentially liable in these actions, and codify the liability of
40 public entities in these actions.

41 STATUTE OF LIMITATIONS: Currently, N.J.S.2A:14-2 provides that
42 personal injury suits must be commenced within two years of
43 accrual of the cause of action, except for certain medical
44 malpractice actions on behalf of minors. Under the bill, this two-
45 year statute of limitations would be eliminated for actions brought
46 under P.L.1992, c.109, s.1 (C.2A:61B-1) (sexual abuse of a child);
47 paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7)
48 (willful, wanton or grossly negligent act of commission or

1 omission, including sexual assault or other crime of a sexual nature,
2 brought against a trustee, director, officer, employee, agent, servant
3 or volunteer of a nonprofit corporation, society or association
4 organized exclusively for religious, charitable or educational
5 purposes); and P.L.2005, c.264, s.1 (C.2A:53A-7.4) (sexual offense
6 committed against a minor due to the negligent hiring, supervision
7 or retention of an employee, agent or servant of a nonprofit
8 corporation, society or association organized exclusively for
9 religious, charitable, educational or hospital purposes).

10 CHARITABLE IMMUNITY ACT: WILLFUL, WANTON, AND GROSSLY
11 NEGLIGENT ACTS BY TRUSTEES, EMPLOYEES AND OTHER
12 INDIVIDUALS. Under current law, P.L.1959, c.90, s.1 (C.2A:53A-7),
13 part of the Charitable Immunity Act, the trustees, directors,
14 officers, employees, agents, servants or volunteers of nonprofit
15 corporations, societies or associations organized for religious,
16 charitable, or educational purposes are liable for willful, wanton, or
17 grossly negligent acts including sexual assault or other crimes of a
18 sexual nature. The bill would expand this liability to include sexual
19 abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (*See*
20 *subparagraph (a) of paragraph (1) of subsection c. of P.L.1959,*
21 *c.90, s.1 (C.2A:53A-7)*)

22 CHARITABLE IMMUNITY ACT: WILLFUL, WANTON, AND GROSSLY
23 NEGLIGENT ACTS BY ORGANIZATIONS. The bill amends the
24 Charitable Immunity Act to provide that the organizations would
25 also be liable for any willful, wanton, or grossly negligent act
26 resulting in the commission of various crimes of a sexual nature or
27 sexual abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (*See*
28 *subparagraph (a) of paragraph (1) of subsection c. of P.L.1959,*
29 *c.90, s.1 (C.2A:53A-7)*)

30 CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY TRUSTEES,
31 EMPLOYEES AND OTHER INDIVIDUALS. The bill would impose
32 liability for individuals' negligence under certain circumstances.
33 Under the bill, any trustee, director, officer, employee, agent,
34 servant or volunteer of a nonprofit corporation, society or
35 association organized exclusively for religious, charitable or
36 educational purposes causing damage by any negligent act resulting
37 in the commission of sexual assault, any other crime of a sexual
38 nature or sexual abuse as defined in P.L.1992, c.109, s.1
39 (C.2A:61B-1) would be liable if that person *had a supervisory or*
40 *oversight role* over the person committing the act of sexual assault,
41 other crime of a sexual nature or sexual abuse as defined in
42 P.L.1992, c.109, s.1 (C.2A:61B-1). (*See subparagraph (c) of*
43 *paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7)*)

44 CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY
45 ORGANIZATIONS. Under the bill, organizations would also be liable
46 for any negligent act that results in the commission of sexual
47 assault, the commission of any other crime of a sexual nature or

1 sexual abuse. (See subparagraph (b) of paragraph (1) of subsection
2 c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

3 CHILD SEXUAL ABUSE ACT - LIABILITY FOR ACQUIESCENCE: The
4 bill would expand the category of persons who are potentially liable
5 in any civil action alleging the sexual abuse of a child brought
6 pursuant to P.L.1992, c.109, s.1 (C.2A:61B-1). Under current law,
7 in addition to the person who committed the sexual abuse, a parent,
8 resource family parent (i.e., foster parent), guardian or other person
9 *standing in loco parentis* within the household who knowingly
10 permitted or acquiesced in the sexual abuse is also civilly liable for
11 the abuse. The bill provides that *any person* who knowingly
12 permitted or acquiesced in the sexual abuse would be civilly liable.

13 PUBLIC ENTITIES: The bill provides that, notwithstanding the
14 provisions of the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et
15 seq., or any other law, public entities would be liable in actions for
16 damages alleging the sexual abuse of a child brought pursuant to
17 P.L.1992, c.109, s.1 (C.2A:61B-1), paragraph (1) of subsection c. of
18 P.L.1959, c.90, s.1 (C.2A:53A-7) or P.L.2005, c.264, s.1
19 (C.2A:53A-7.4).

20 EFFECTIVE DATE: The bill would apply to any action filed on or
21 after the effective date, including but not limited to matters where
22 the statute of limitations has expired and matters filed with a court
23 that have not yet been dismissed or finally adjudicated as of the
24 effective date.

25 The bill would revive any action that was previously dismissed
26 on grounds that the applicable statute of limitations had expired for
27 a period of two years following the effective date.

28 The bill would not revive any action previously dismissed on
29 grounds other than the statute of limitations or revive any action
30 that has been finally adjudicated.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 477

STATE OF NEW JERSEY

DATED: MARCH 7, 2019

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill No. 477.

This substitute bill would extend the statute of limitations in civil actions for sexual abuse claims, as well as create a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill would also expand the categories of potential defendants in civil actions, and for some actions permit retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The following section-by-section summary of the bill's provisions further details its scope and application to lawsuits which could be filed beginning on December 1, 2019, the bill's effective date.

Section 1: This section amends the current law's general two-year statute of limitations for personal injury claims, N.J.S.2A:14-2, in order to indicate an exception for the new, extended statute of limitations periods detailed in section 2 of the bill.

Section 2 - Child and Adult Victims: This section creates the new, extended statute of limitations periods for sexual abuse, one of which would apply to persons who were abused when minors under the age of 18 years, and one of which would apply to persons who were abused after reaching 18 years of age. It would prohibit lawsuits to proceed as a class action, due to the particular circumstances unique to each person's abuse, and privately negotiated settlements of abuse claims on a class basis would be void and unenforceable. This section also provides guidance as to the retroactive application of potential new standards of liability created by the bill for lawsuits that could be filed in accordance with the new statute of limitations periods.

Child Victim – For abuse that occurred prior to, on or after the bill's effective date, a lawsuit would need to be filed within 37 years after the child victim turns 18 years of age (filed by the victim's 55th birthday), or within seven years of discovering the injury and its cause if the end date of the seven-year period would occur after the victim turns 55 years of age. Since the extended

statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of 55 years when the bill takes effect, or who will reach 55 years of age sometime after the bill takes effect, and who is aware of the injury and its cause could file a suit; the “reasonable discovery” requirement would only apply if the victim filed suit after turning 55 years of age due to a delayed discovery of the injury and its cause.

This date of reasonable discovery (no more than seven years prior to filing suit) could be challenged, triggering the need for the date to be judicially determined by a Lopez hearing in order to properly find whether the lawsuit was filed in time. See Lopez v. Swyer, 62 N.J. 267 (1973) (establishing objective, reasonable person standard to determine when injured party knew or should have known sufficient factors about injury to trigger running of statute of limitations); R.L. v. Voytac, 199 N.J. 285 (2009) (adding a second layer of analysis to Lopez hearing for sexual abuse lawsuits to consider several subjective factors concerning the individual victim as grounds for tolling statute of limitations).

The bill would establish retroactive application of the standard of liability set forth in the Charitable Immunity Act, section 1 of P.L.1959, c.90 (C.2A:53A-7), as amended by the bill in section 5. This could create, for child victim lawsuits filed under the new, extended statute of limitations, additional retroactive liability for non-profit organizations organized exclusively for religious, charitable, educational, or hospital purposes concerning willful, wanton or grossly negligent acts resulting in abuse that occurred prior to August 8, 2006. That date is when the New Jersey Supreme Court decided the case of Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), and found for the first time that the Charitable Immunity Act does not bar lawsuits against organizations based on such aggravated forms of wrongful conduct; it only bars suits based on “simple” or “standard” negligent conduct (with some statutorily carved out exceptions). Id. at 96-97. Prior to this decision, the Supreme Court and lower courts found that the act did shield organizations from liability for gross negligence and even intentional conduct committed by its trustees, directors, officers, employees, agents, servants, or volunteers. See Schultz v. Roman Catholic Archdiocese, 95 N.J. 530, 535-536 (1984); Monaghan v. Holy Trinity Church, 275 N.J. Super. 594 (App. Div. 1994). The bill’s amendment to the Charitable Immunity Act, to be applied retroactively, recognizes the current interpretation and scope of organizational liability based on Hardwicke.

The retroactive expansion of organizational liability under this section does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as they were always generally liable for their own willful, wanton or grossly negligent acts, and this more-than-

negligence liability standard would remain the same following the bill's enactment. Such persons were added to section 1 of P.L.1959, c.90 (C.2A:53A-7) by the enactment of P.L.1995, c.183 (effective July 24, 1995), but only granted immunity for acts amounting to simple negligence.

A subcategory of such persons, the uncompensated trustees, directors, officers, or voluntary members serving on the boards or other governing bodies of non-profit organizations, would also not be impacted by the retroactive organizational liability. These uncompensated leaders were provided an earlier immunity for their own acts of negligence, and even gross negligence, resulting from the performance of their duties of office pursuant to a supplement to the Charitable Immunity Act, P.L.1987, c.87 (C.2A:53A-7.1) (effective April 6, 1987); these people can only be held liable for acts amounting to a "reckless disregard" of their duties, which "conduct [is a] degree[] of civil culpability greater than gross negligence." See Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 365-366 (2016).

Additionally, the bill establishes retroactive application of an exception to the Charitable Immunity Act set forth in P.L.2005, c.264 (C.2A:53A-7.4 et seq.), making non-profit organizations liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18 years. This liability for simple negligence, when first enacted by P.L.2005, c.264, took effect on January 5, 2006, and applied prospectively only. See P.L.2005, c.264, s.2 (C.2A:53A-7.5). However, as amended by this bill in section 6, organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child could be applied retroactively in lawsuits for abuse occurring prior to the bill's effective date, which also means it could be applied retroactively to acts of abuse occurring prior to the effective date of P.L.2005, c.264.

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, including the aforementioned subcategory of uncompensated leaders, as these persons, who are not referenced in the relevant statutory provisions, are not intended to be subject to liability for acts of mere negligence in lawsuits concerning the hiring, supervision, or retention of an individual resulting in sexual abuse against a child. The standard immunity for negligent acts provided to such persons by the Charitable Immunity Act, as amended in 1995 and earlier supplemented in 1987, as explained above, is not pierced by the exception established in P.L.2005, c.264 (C.2A:53A-7.4 et seq.). Additionally, in any such lawsuit involving acts of sexual abuse that pre-date the statutory negligence immunity provided to such

persons, such lawsuit would still only be permitted against the non-profit organization because the retroactively applied organizational liability of P.L.2005, c.264 would be the basis of the suit, and not any form of pre-statutory common law negligence liability.

Adult Victim – For abuse committed against a person 18 years of age or older that occurred prior to, on or after the bill’s effective date, a lawsuit would need to be filed within seven years of discovering the injury and its cause. The same “reasonable discovery” requirement described above that could apply to lawsuits involving child victims, and the possible use of a Lopez hearing to judicially determine the discovery date, if needed, would apply to adult victim suits filed under the new, extended statute of limitations.

The retroactive application of the amended Charitable Immunity Act, per section 5, would also apply to adult victim suits filed under the new, extended statute of limitations (adult victims could not bring suit under the charitable immunity exception based upon the negligent hiring, supervision, or retention of a person resulting in abuse, as amended by section 6, because such a cause of action is only available to child victims).

Section 3 - Child Victim: This section applies the new, extended statute of limitations period for child victims of abuse detailed in section 2 of the bill (suit must be filed by the 55th birthday, or within seven years of discovering the injury) to lawsuits brought by children, through a parent, guardian, or advocacy organization, or personally upon turning 18 years of age, for the following forms of intentional (willful) sexual exploitation that are intended to target the child pornography industry:

- permitting, enticing or coercing a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or performance;

- photographing or filming a child in a prohibited sexual act or in the simulation of such an act or who uses any device to reproduce or reconstruct the image of the child in a prohibited sexual act or in the simulation of such an act; or

- knowingly receiving, for the purpose of selling or knowingly selling, procuring, manufacturing, giving, providing, lending, trading, mailing, delivering, transferring, publishing, distributing, circulating, disseminating, presenting, exhibiting, advertising, offering or agreeing to offer any photograph, film, videotape or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act. See P.L.1992, c.7, ss.2 and 3 (C.2A:30B-2 and 2A:30B-3).

As any such cause of action involves intentional action on the part of the personal abuser or organizational entity under which the

sexual exploitation occurs, it does not create any liability based on merely negligent acts resulting in abuse.

Section 4 - Child Victim: This section amends the Child Sexual Abuse Act, section 1 of P.L.1992, c.109 (C.2A:61B-1), to apply the new, extended statute of limitations period for child victims of abuse detailed in section 2 (suit must be filed by the 55th birthday, or within seven years of discovering the injury) to lawsuits filed against two specific categories of abusers: (1) the “active” abuser, being the person who inflicted the abuse; and (2) the “passive” abuser, being a “parent, resource family parent, guardian or other person standing in loco parentis” who “knowingly permits or acquiesces” to the abuse by an active abuser. See Hardwicke v. American Boychoir Sch., 188 N.J. at 86.

Under the Child Sexual Abuse Act, the phrase “person standing in loco parentis” may provide for organizational liability for passive abuse, because the use of “person,” per the definition set forth in R.S.1:1-2, includes private and public corporations (e.g., a county or municipality) as well as individuals. See Hardwicke v. American Boychoir Sch., 188 N.J. at 91-93; J.H. v. Mercer County Youth Detention Ctr., 396 N.J. Super. 1, 10-12 (App. Div. 2007). However, under the Child Sexual Abuse Act as currently written, this “in loco parentis” liability (meaning in place of a parent, Black’s Law Dictionary 787 (6th ed. 1990)) is limited, in that the organization’s setting in which the abuse knowingly occurred must also be deemed to be a “household.” On this point, courts have determined a private, full-time boarding school and a county’s full-time youth detention center to each be a “household” establishing liability, but determined that a public school is not a “household” based on the school’s more limited, temporary custody and control of children only during school hours. See American Boychoir Sch., 188 N.J. at 93-94 (discussing private boarding school); J.H. v. Mercer County Youth Detention Ctr., 396 N.J. Super. at 14-15 (discussing full-time detention center); D.M. v. River Dell Regional High Sch., 373 N.J. Super. 639, 649 (App. Div. 2004) (discussing public school). The “household” limitation would be deleted by the bill, so that “passive” abuser liability could apply to any individual person, or private or public entity, who takes custody and control of children even on a limited, temporary basis, so long as this custody and control is sufficient to establish the person or entity as being “in loco parentis.”

Both an “active” and “passive” abuser are subject to a knowing (willful) standard of liability, and therefore this section does not create any liability based on merely negligent acts resulting in abuse. Also of note, a cause of action under this section based on the expanded liability against a “passive” abuser, removing the “household” setting as a requirement for liability, is not listed in section 2 or section 9 concerning the retroactive application of

certain newly created forms of liability to lawsuits brought under the new, extended statute of limitations or, as further detailed below, during a two-year filing window available for otherwise time-barred claims (see comments for those sections), and is intended to only apply prospectively.

Section 5 - Child and Adult Victims: This section amends the Charitable Immunity Act, section 1 of P.L.1959, c.90 (C.2A:53A-7), to add language to subsection c., indicating that non-profit organizations are expressly liable for willful, wanton or grossly negligent acts. This codifies what was already understood via case law since August 8, 2006 - that organizational charitable immunity only applies to protect organizations from lawsuits claiming injury based on merely negligent acts, not more aggravated forms of wrongful conduct, such as willful, wanton or grossly negligent acts. See *Hardwicke v. American Boychoir Sch.*, 188 N.J. at 96-97 (2006). The added language may establish retroactive liability for lawsuits filed under the new, extended statute of limitations periods, or filed during the below described two-year filing window for otherwise time-barred claims, concerning abusive acts that occurred prior to August 8, 2006, as detailed in the comments provided for section 2 and section 9 of the bill.

Section 6 - Child Victim: This section amends an existing exception to the Charitable Immunity Act set forth in P.L.2005, c.264 (C.2A:53A-7.4 et seq.), making non-profit organizations liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. This liability for simple negligence, when first enacted by P.L.2005, c.264, took effect on January 5, 2006, and applied prospectively only. See P.L.2005, c.264, s.2 (C.2A:53A-7.5). However, as amended by the bill (by adding subsection b.), organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child could be applied retroactively in lawsuits filed under the new, extended statute of limitations period (suit must be filed by the 55th birthday, or within seven years of discovering the injury) or during the below described two-year window, per section 2 or section 9, respectively, for abuse occurring prior to the bill's effective date, which also means it could be applied retroactively to acts of abuse occurring prior to the effective date of P.L.2005, c.264 (January 5, 2006).

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as these persons, who are not referenced in the relevant statutory provisions, are not intended to be subject to liability for acts of mere negligence in lawsuits concerning the hiring, supervision, or retention of an individual resulting in sexual abuse against a child. The standard

immunity for negligent acts provided to such persons by the Charitable Immunity Act, as amended in 1995 and earlier supplemented in 1987, as explained in the comments for section 2, is not pierced by the exception established in P.L.2005, c.264 (C.2A:53A-7.4 et seq.). Additionally, in any such lawsuit involving acts of sexual abuse that pre-date the statutory negligence immunity provided to such persons, such lawsuit would still only be permitted against the non-profit organization because the retroactively applied organizational liability of P.L.2005, c.264 would be the basis of the suit, and not any form of pre-statutory common law negligence liability.

Section 7 – Child and Adult Victims: This section provides that the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., or any other law, that may provide some form of governmental immunity from lawsuits based on injuries resulting from acts of sexual abuse are inapplicable, so that any public entity, as defined in the “New Jersey Tort Claims Act,” may be held liable in any such suit in the same manner as a private organization.

Section 8 – Child and Adult Victims: This section eliminates the “New Jersey Tort Claims Act” two-year statute of limitations period, set forth in N.J.S.59:8-8, for bringing a sexual abuse lawsuit against a public entity, as well as any of the act’s procedural requirements, such as the 90-day period for filing notice of a claim of liability against a public entity for such lawsuits; the process of filing a lawsuit with service upon the liable public entity or entities would thus be the same as when suing a private organization. Public entities would also be subject, just like a private organization, to the new, extended statute of limitations periods for child and adult victims of abuse detailed in section 2 (child victim - suit must be filed by the 55th birthday, or within seven years of discovering the injury; adult victim – suit must be filed within seven years of discovering the injury).

Section 9 - Child and Adult Victims: This section creates a two-year window for lawsuits to be filed for acts of sexual abuse that occurred prior to the bill’s effective date which would otherwise be time-barred, even after applying (retroactively) the new, extended statute of limitations period for child and adult victims of abuse detailed in section 2 (child victim - suit must be filed by the 55th birthday, or within seven years of discovering the injury; adult victim – suit must be filed within seven years of discovering the injury).

The same retroactive application of the amended Charitable Immunity Act, per section 5, and the amended charitable immunity exception based upon the negligent hiring, supervision, or retention of a person resulting in abuse, per section 6, that would apply to lawsuits

filed during any applicable extended statute of limitations period would also apply to child and adult victim suits filed during the two-year window established by this section (see comments on retroactivity under section 2, section 5, and section 6).

As with lawsuits filed in accordance with any applicable statute of limitations pursuant to section 2, suits otherwise time-barred that were filed during the two-year window could not proceed as a class action, due to the particular circumstances unique to each person's abuse, and privately negotiated settlements on a class basis concerning abuse claims that could be brought during the two-year window would be void and unenforceable.

Section 10 - Effective Date: The effective date section provides that the bill would take effect on December 1, 2019, and beginning on that date lawsuits could be filed in accordance with the bill's provisions, as described above.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 477
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MARCH 29, 2019

SUMMARY

- Synopsis:** Extends statute of limitations in civil actions for sexual abuse claims; expands categories of potential defendants in civil actions; creates two-year window for parties to bring previously time-barred actions based on sexual abuse.
- Types of Impact:** Annual State expenditure and revenue increases, General Fund. Annual expenditure increases to local governmental units and school districts.
- Agencies Affected:** State and local governmental units, including school districts.

Office of Legislative Services Estimate

Fiscal Impact	
Annual State Expenditure Increase	Indeterminate
Annual State Revenue Increase	Indeterminate
Annual Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) expects that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments. The OLS, however, has no information on the number of cases that may be brought against the State, school districts, and local units of government; the number of cases that may result in a settlement or court-awarded damages against governmental entities; and the amount of settlements and damages awarded. In part, the magnitude of the additional expenditures will depend on jurisprudence to be developed.
- For governmental entities that self-insure, such as the State, each individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars.
- Local governmental units and school districts are either self-insured or pay liability insurance premiums. Depending on the number of claims against local governmental units and school

districts and the amount of any settlements and judgements, it would be reasonable to expect that annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially.

- The State Judiciary will incur an indeterminate increase in annual operating expenditures, as additional resources will likely have to be allocated to an increased civil caseload. The OLS also anticipates collections from court filing fees to grow in tandem with the caseload, although that impact is likely to be nominal.

BILL DESCRIPTION

This bill extends the statute of limitations period in civil actions for sexual abuse claims and creates a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill also expands the categories of potential defendants in civil actions, and for some actions permits retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The provisions of the bill apply to lawsuits which could be filed beginning on December 1, 2019.

Among its provisions, the bill voids the existing immunity of governments from lawsuits based on injuries resulting from acts of sexual abuse. Consequently, any public entity may be held liable in any such suit in the same manner as a private organization. The bill also eliminates the current statutory two-year statute of limitations period for bringing a sexual abuse lawsuit against a public entity, as well as certain other related procedural requirements. Public entities are also subject, just like a private organization, to the new, extended statute of limitations periods for victims of abuse (child victims must file suit by the 55th birthday, or within seven years of discovering the injury; adult victims must file suit within seven years of discovering the injury).

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments. The OLS, however, has no information on the number of cases that may be brought against the State, school districts, and local units of government; the number of cases that may result in a settlement or court-awarded damages against governmental entities; and the amount of settlements and damages awarded.

In part, the OLS' uncertainty is attributable to jurisprudence that will have to be developed on the extent to which governmental entities and their individual employees and officials will become civilly liable for failing to provide security deemed adequate at public facilities, on public lands, or generally; and exercising discretion in not opting for the most severe course of action allowable vis-à-vis suspects, defendants, and inmates eligible for parole.

The OLS notes that because of the two-year window for parties to bring previously time-barred actions; the State, school districts, and local units of government are likely to face an elevated number of claims that will have to be defended in the first few years after the bill's enactment. Once these retroactive, previously impermissible claims will have been adjudicated or settled, the count of additional cases filed as a result of this bill will normalize.

Each individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars. For example, a review of payments out of the State's Tort Claims Liability Fund between FY 2013 and FY 2015 shows three payments related to sexual abuse and assault, notwithstanding the immunity currently granted to the State: \$175,000 in a sexual assault case in FY 2015, \$200,000 in a sexual abuse case in FY 2014, and \$3,425,000 in a sexual abuse in foster care case in FY 2013.

State Impact: The OLS does not have sufficient information to quantify the increase in annual expenditures the bill will cause to the State. By way of background, the State is self-insured and does not purchase liability insurance policies. The Tort Claims Liability Fund provides funding for the payment of claims arising from wrongful actions or omissions. The FY 2019 appropriation to pay for claim settlements against State entities is \$22.4 million. Budget language provides that additional funds may be appropriated for the purpose of paying tort claims as recommended by the Attorney General and as determined by the Director of the Office of Management and Budget.

In addition, the Judiciary will incur an indeterminate increase in annual operating expenditures, as additional resources will likely have to be allocated to an increased civil caseload. The OLS also anticipates collections from court filing fees to grow in tandem with the caseload, although that impact is likely to be nominal.

Local Government and School District Impact: The OLS does not have sufficient information to quantify the increase in annual expenditures the bill will cause to local governmental units and school districts. Some local governments and school districts are self-insured, while others pay liability insurance premiums. Depending on the number of claims against local governmental units and school districts and the amount of any settlements and judgments, it would be reasonable to expect that annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially. Local governmental units and school districts that self-insure, in turn, will have to defend themselves against additional tort claims and pay additional, potentially substantial, settlements and judgments.

School districts may be the most exposed to the filing of additional tort claims if the bill were enacted, given the nature of their responsibilities. To underscore that point, 465 teaching applicants and employees were disqualified from teaching over the past five years, with 189 having been disqualified for sexual offenses and 276 for child abuse.

Section: Judiciary

*Analyst: Sarita Welsh
Associate Counsel*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3648

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 12, 2018

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Co-Sponsored by:

Assemblywoman Murphy, Assemblyman Armato, Assemblywoman McKnight, Assemblyman Mazzeo, Assemblywoman N.Munoz, Assemblyman Zwicker, Assemblywomen Chaparro, DiMaso, Reynolds-Jackson, Assemblymen Verrelli, DeAngelo, Assemblywoman Downey, Assemblymen Caputo and Bramnick

SYNOPSIS

Removes statute of limitations in certain civil actions for sexual abuse; expands categories of defendants liable in such actions.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/26/2019)

1 AN ACT concerning certain civil actions alleging sexual abuse,
2 amending various parts of the statutory law and supplementing
3 Title 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2A:14-2 is amended to read as follows:

9 2A:14-2. a. **Every** Except as provided in subsections b. and
10 c. of this section, every action at law for an injury to the person
11 caused by the wrongful act, neglect or default of any person within
12 this State shall be commenced within two years next after the cause
13 of any such action shall have accrued**;** except that an action by or
14 on behalf of a minor that has accrued for medical malpractice for
15 injuries sustained at birth shall be commenced prior to the minor's
16 13th birthday**].**

17 b. (1) An action by or on behalf of a minor that has accrued for
18 medical malpractice for injuries sustained at birth shall be
19 commenced prior to the minor's 13th birthday.

20 (2) In the event that an action by or on behalf of a minor that has
21 accrued for medical malpractice for injuries sustained at birth is not
22 commenced by the minor's parent or guardian prior to the minor's
23 12th birthday, the minor or a person 18 years of age or older
24 designated by the minor to act on the minor's behalf may commence
25 such an action. For this purpose, the minor or designated person
26 may petition the court for the appointment of a guardian ad litem to
27 act on the minor's behalf.

28 c. An action brought pursuant to section 1 of P.L.1992, c.109
29 (C.2A:61B-1), paragraph (1) of subsection c. of section 1 of
30 P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005, c.264
31 (C.2A:53A-7.4) may be commenced at any time.

32 (cf: P.L.2004, c.17, s.3)

33
34 2. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to
35 read as follows:

36 1. a. No nonprofit corporation, society or association
37 organized exclusively for religious, charitable or educational
38 purposes or its trustees, directors, officers, employees, agents,
39 servants or volunteers shall, except as is hereinafter set forth, be
40 liable to respond in damages to any person who shall suffer damage
41 from the negligence of any agent or servant of such corporation,
42 society or association, where such person is a beneficiary, to
43 whatever degree, of the works of such nonprofit corporation,
44 society or association; provided, however, that such immunity from
45 liability shall not extend to any person who shall suffer damage

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 from the negligence of such corporation, society, or association or
2 of its agents or servants where such person is one unconcerned in
3 and unrelated to and outside of the benefactions of such
4 corporation, society or association.

5 Nothing in this subsection shall be deemed to grant immunity to
6 any health care provider, in the practice of his profession, who is a
7 compensated employee, agent or servant of any nonprofit
8 corporation, society or association organized exclusively for
9 religious, charitable or educational purposes.

10 b. No nonprofit corporation, society or association organized
11 exclusively for hospital purposes or its trustees, directors, officers
12 or volunteers shall, except as is hereinafter set forth, be liable to
13 respond in damages to any person who shall suffer damage from the
14 negligence of any agent or servant of such corporation, society or
15 association, where such person is a beneficiary, to whatever degree,
16 of the works of such nonprofit corporation, society or association;
17 provided, however, that such immunity from liability shall not
18 extend to any person who shall suffer damage from the negligence
19 of such corporation, society, or association or of its agents or
20 servants where such person is one unconcerned in and unrelated to
21 and outside of the benefactions of such corporation, society or
22 association; but nothing herein contained shall be deemed to exempt
23 the agent, employee or servant individually from their liability for
24 any such negligence.

25 c. Nothing in this section shall be deemed to grant immunity
26 to: (1) (a) any nonprofit corporation, society or association
27 organized exclusively for religious, charitable or educational
28 purposes or its trustee, director, officer, employee, agent, servant or
29 volunteer causing damage by a willful, wanton or grossly negligent
30 act of commission or omission, including sexual assault [and] , any
31 other [crimes] crime of a sexual nature or sexual abuse as defined
32 in section 1 of P.L.1992, c.109 (C.2A:61B-1);

33 (b) any nonprofit corporation, society or association organized
34 exclusively for religious, charitable or educational purposes causing
35 damage by any negligent act resulting in the commission of sexual
36 assault, any other crime of a sexual nature or sexual abuse as
37 defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); or

38 (c) any trustee, director, officer, employee, agent, servant or
39 volunteer of a nonprofit corporation, society or association
40 organized exclusively for religious, charitable or educational
41 purposes causing damage by any negligent act resulting in the
42 commission of sexual assault, any other crime of a sexual nature or
43 sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-
44 1) if the trustee, director, officer, employee, agent, servant or
45 volunteer had a supervisory or oversight role over the person
46 committing the act of sexual assault, other crime of a sexual nature
47 or sexual abuse as defined in section 1 of P.L.1992, c.109
48 (C.2A:61B-1);

1 (2) any trustee, director, officer, employee, agent, servant or
2 volunteer causing damage as the result of the negligent operation of
3 a motor vehicle; or

4 (3) an independent contractor of a nonprofit corporation, society
5 or association organized exclusively for religious, charitable,
6 educational or hospital purposes.
7 (cf: P.L.1995, c.183, s.1)

8
9 3. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to
10 read as follows:

11 1. a. As used in this act:

12 (1) "Sexual abuse" means an act of sexual contact or sexual
13 penetration between a child under the age of 18 years and an adult.
14 A parent, resource family parent, guardian or other person
15 **【standing in loco parentis within the household】** who knowingly
16 permits or acquiesces in sexual abuse by any other person also
17 commits sexual abuse, except that it is an affirmative defense if the
18 parent, resource family parent, guardian or other person **【standing**
19 **in loco parentis】** was subjected to, or placed in, reasonable fear of
20 physical or sexual abuse by the other person so as to undermine the
21 person's ability to protect the child.

22 (2) "Sexual contact" means an intentional touching by the victim
23 or actor, either directly or through clothing, of the victim's or actor's
24 intimate parts for the purpose of sexually arousing or sexually
25 gratifying the actor. Sexual contact of the adult with himself must
26 be in view of the victim whom the adult knows to be present.

27 (3) "Sexual penetration" means vaginal intercourse, cunnilingus,
28 fellatio or anal intercourse between persons or insertion of the hand,
29 finger or object into the anus or vagina either by the adult or upon
30 the adult's instruction.

31 (4) "Intimate parts" means the following body parts: sexual
32 organs, genital area, anal area, inner thigh, groin, buttock or breast
33 of a person.

34 (5) "Injury or illness" includes psychological injury or illness,
35 whether or not accompanied by physical injury or illness.

36 b. In any civil action for damages for injury or illness based on
37 sexual abuse, the **【cause of】** action **【shall accrue at the time of**
38 **reasonable discovery of the injury and its causal relationship to the**
39 **act of sexual abuse. Any such action shall be brought within two**
40 **years after reasonable discovery】** may be commenced at any time.

41 c. **【Nothing in this act is intended to preclude the court from**
42 **finding that the statute of limitations was tolled in a case because of**
43 **the plaintiff's mental state, duress by the defendant, or any other**
44 **equitable grounds. Such a finding shall be made after a plenary**
45 **hearing. At the plenary hearing the court shall hear all credible**
46 **evidence and the Rules of Evidence shall not apply, except for Rule**
47 **403 or a valid claim of privilege. The court may order an**

1 independent psychiatric evaluation of the plaintiff in order to assist
2 in the determination as to whether the statute of limitations was
3 tolled.] Deleted by amendment, P.L. , c. (pending before the
4 Legislature as this bill)

5 d. (1) Evidence of the victim's previous sexual conduct shall
6 not be admitted nor reference made to it in the presence of a jury
7 except as provided in this subsection. When the defendant seeks to
8 admit such evidence for any purpose, the defendant must apply for
9 an order of the court before the trial or preliminary hearing, except
10 that the court may allow the motion to be made during trial if the
11 court determines that the evidence is newly discovered and could
12 not have been obtained earlier through the exercise of due diligence.
13 After the application is made, the court shall conduct a hearing in
14 camera to determine the admissibility of the evidence. If the court
15 finds that evidence offered by the defendant regarding the sexual
16 conduct of the victim is relevant and that the probative value of the
17 evidence offered is not outweighed by its collateral nature or by the
18 probability that its admission will create undue prejudice, confusion
19 of the issues, or unwarranted invasion of the privacy of the victim,
20 the court shall enter an order setting forth with specificity what
21 evidence may be introduced and the nature of the questions which
22 shall be permitted, and the reasons why the court finds that such
23 evidence satisfies the standards contained in this section. The
24 defendant may then offer evidence under the order of the court.

25 (2) In the absence of clear and convincing proof to the contrary,
26 evidence of the victim's sexual conduct occurring more than one
27 year before the date of the offense charged is presumed to be
28 inadmissible under this section.

29 (3) Evidence of the victim's previous sexual conduct shall not be
30 considered relevant unless it is material to proving that the source
31 of semen, pregnancy or disease is a person other than the defendant.
32 For the purposes of this subsection, "sexual conduct" shall mean
33 any conduct or behavior relating to sexual activities of the victim,
34 including but not limited to previous or subsequent experience of
35 sexual penetration or sexual contact, use of contraceptives, living
36 arrangement and life style.

37 e. (1) The court may, on motion and after conducting a hearing
38 in camera, order the taking of the testimony of a victim on closed
39 circuit television at the trial, out of the view of the jury, defendant,
40 or spectators upon making findings as provided in paragraph (2) of
41 this subsection.

42 (2) An order under this section may be made only if the court
43 finds that the victim is 16 years of age or younger and that there is a
44 substantial likelihood that the victim would suffer severe emotional
45 or mental distress if required to testify in open court. The order
46 shall be specific as to whether the victim will testify outside the
47 presence of spectators, the defendant, the jury, or all of them and

1 shall be based on specific findings relating to the impact of the
2 presence of each.

3 (3) A motion seeking closed circuit testimony under paragraph
4 (1) of this subsection may be filed by:

5 (a) The victim or the victim's attorney, parent or legal guardian;

6 (b) The defendant or the defendant's counsel; or

7 (c) The trial judge on the judge's own motion.

8 (4) The defendant's counsel shall be present at the taking of
9 testimony in camera. If the defendant is not present, he and his
10 attorney shall be able to confer privately with each other during the
11 testimony by a separate audio system.

12 (5) If testimony is taken on closed circuit television pursuant to
13 the provisions of this act, a stenographic recording of that testimony
14 shall also be required. A typewritten transcript of that testimony
15 shall be included in the record on appeal. The closed circuit
16 testimony itself shall not constitute part of the record on appeal
17 except on motion for good cause shown.

18 f. (1) The name, address, and identity of a victim or a
19 defendant shall not appear on the complaint or any other public
20 record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their
21 place initials or a fictitious name shall appear.

22 (2) Any report, statement, photograph, court document,
23 complaint or any other public record which states the name, address
24 and identity of a victim shall be confidential and unavailable to the
25 public.

26 (3) The information described in this subsection shall remain
27 confidential and unavailable to the public unless the victim consents
28 to the disclosure or if the court, after a hearing, determines that
29 good cause exists for the disclosure. The hearing shall be held after
30 notice has been made to the victim and to the defendant and the
31 defendant's counsel.

32 (4) Nothing contained herein shall prohibit the court from
33 imposing further restrictions with regard to the disclosure of the
34 name, address, and identity of the victim when it deems it necessary
35 to prevent trauma or stigma to the victim.

36 g. In accordance with R.5:3-2 of the Rules Governing the
37 Courts of the State of New Jersey, the court may, on its own or a
38 party's motion, direct that any proceeding or portion of a proceeding
39 involving a victim sixteen years of age or younger be conducted in
40 camera.

41 h. A plaintiff who prevails in a civil action pursuant to this act
42 shall be awarded damages in the amount of \$10,000 plus reasonable
43 attorney's fees, or actual damages, whichever is greater. Actual
44 damages shall consist of compensatory and punitive damages and
45 costs of suit, including reasonable attorney's fees. Compensatory
46 damages may include, but are not limited to, damages for pain and
47 suffering, medical expenses, emotional trauma, diminished

1 childhood, diminished enjoyment of life, costs of counseling, and
2 lost wages.

3 (cf: P.L.2004, c.130, s.10)

4

5 4. (New section) Notwithstanding any other provision of law
6 to the contrary, including but not limited to the "New Jersey Tort
7 Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an
8 action for damages brought under the provisions of section 1 of
9 P.L.1992, c.109 (C.2A:61B-1), paragraph (1) of subsection c. of
10 section 1 of P.L.1959, c.90 (C.2A:53A-7) or section 1 of P.L.2005,
11 c.264 (C.2A:53A-7.4).

12

13 5. (New section) The provisions of this amendatory and
14 supplementary act, P.L. , c. (C.) (pending before the
15 Legislature as this bill) shall be inapplicable to any civil action
16 governed by the statute of limitations of another jurisdiction.

17

18 6. (New section) a. The provisions of this amendatory and
19 supplementary act, P.L. , c. (C.) (pending before the
20 Legislature as this bill), shall apply to any action filed on or after
21 the effective date, including but not limited to matters where the
22 statute of limitations has expired and matters filed with a court that
23 have not yet been dismissed with prejudice or finally adjudicated as
24 of the effective date.

25 b. In addition, for a period of two years following the effective
26 date, the provisions of this act shall also revive any action
27 previously filed that was dismissed on grounds that the applicable
28 statute of limitations had expired, but shall not revive any action
29 previously dismissed on any other grounds or revive any action that
30 has been finally adjudicated.

31

32 7. This act shall take effect immediately.

33

34

35 STATEMENT

36

37 This bill would eliminate the statute of limitations in civil
38 actions for sexual abuse, expand the categories of defendants who
39 are potentially liable in these actions, and codify the liability of
40 public entities in these actions.

41 STATUTE OF LIMITATIONS: Currently, N.J.S.2A:14-2 provides that
42 personal injury suits must be commenced within two years of
43 accrual of the cause of action, except for certain medical
44 malpractice actions on behalf of minors. Under the bill, this two-
45 year statute of limitations would be eliminated for actions brought
46 under P.L.1992, c.109, s.1 (C.2A:61B-1) (sexual abuse of a child);
47 paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7)
48 (willful, wanton or grossly negligent act of commission or

1 omission, including sexual assault or other crime of a sexual nature,
2 brought against a trustee, director, officer, employee, agent, servant
3 or volunteer of a nonprofit corporation, society or association
4 organized exclusively for religious, charitable or educational
5 purposes); and P.L.2005, c.264, s.1 (C.2A:53A-7.4) (sexual offense
6 committed against a minor due to the negligent hiring, supervision
7 or retention of an employee, agent or servant of a nonprofit
8 corporation, society or association organized exclusively for
9 religious, charitable, educational or hospital purposes).

10 CHARITABLE IMMUNITY ACT: WILLFUL, WANTON, AND GROSSLY
11 NEGLIGENT ACTS BY TRUSTEES, EMPLOYEES AND OTHER
12 INDIVIDUALS. Under current law, P.L.1959, c.90, s.1 (C.2A:53A-7),
13 part of the Charitable Immunity Act, the trustees, directors,
14 officers, employees, agents, servants or volunteers of nonprofit
15 corporations, societies or associations organized for religious,
16 charitable, or educational purposes are liable for willful, wanton, or
17 grossly negligent acts including sexual assault or other crimes of a
18 sexual nature. The bill would expand this liability to include sexual
19 abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (See
20 subparagraph (a) of paragraph (1) of subsection c. of P.L.1959,
21 c.90, s.1 (C.2A:53A-7))

22 CHARITABLE IMMUNITY ACT: WILLFUL, WANTON, AND GROSSLY
23 NEGLIGENT ACTS BY ORGANIZATIONS. The bill amends the
24 Charitable Immunity Act to provide that the organizations would
25 also be liable for any willful, wanton, or grossly negligent act
26 resulting in the commission of various crimes of a sexual nature or
27 sexual abuse as defined in P.L.1992, c.109, s.1 (C.2A:61B-1). (See
28 subparagraph (a) of paragraph (1) of subsection c. of P.L.1959,
29 c.90, s.1 (C.2A:53A-7))

30 CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY TRUSTEES,
31 EMPLOYEES AND OTHER INDIVIDUALS. The bill would impose
32 liability for individuals' negligence under certain circumstances.
33 Under the bill, any trustee, director, officer, employee, agent,
34 servant or volunteer of a nonprofit corporation, society or
35 association organized exclusively for religious, charitable or
36 educational purposes causing damage by any negligent act resulting
37 in the commission of sexual assault, any other crime of a sexual
38 nature or sexual abuse as defined in P.L.1992, c.109, s.1
39 (C.2A:61B-1) would be liable if that person had a supervisory or
40 oversight role over the person committing the act of sexual assault,
41 other crime of a sexual nature or sexual abuse as defined in
42 P.L.1992, c.109, s.1 (C.2A:61B-1). (See subparagraph (c) of
43 paragraph (1) of subsection c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

44 CHARITABLE IMMUNITY ACT: NEGLIGENT ACTS BY
45 ORGANIZATIONS. Under the bill, organizations would also be liable
46 for any negligent act that results in the commission of sexual
47 assault, the commission of any other crime of a sexual nature or

1 sexual abuse. (See subparagraph (b) of paragraph (1) of subsection
2 c. of P.L.1959, c.90, s.1 (C.2A:53A-7))

3 CHILD SEXUAL ABUSE ACT - LIABILITY FOR ACQUIESCENCE: The
4 bill would expand the category of persons who are potentially liable
5 in any civil action alleging the sexual abuse of a child brought
6 pursuant to P.L.1992, c.109, s.1 (C.2A:61B-1). Under current law,
7 in addition to the person who committed the sexual abuse, a parent,
8 resource family parent (i.e., foster parent), guardian or other person
9 standing in loco parentis within the household who knowingly
10 permitted or acquiesced in the sexual abuse is also civilly liable for
11 the abuse. The bill provides that any person who knowingly
12 permitted or acquiesced in the sexual abuse would be civilly liable.

13 PUBLIC ENTITIES: The bill provides that, notwithstanding the
14 provisions of the "New Jersey Tort Claims Act," N.J.S.59:1-1 et
15 seq., or any other law, public entities would be liable in actions for
16 damages alleging the sexual abuse of a child brought pursuant to
17 P.L.1992, c.109, s.1 (C.2A:61B-1), paragraph (1) of subsection c. of
18 P.L.1959, c.90, s.1 (C.2A:53A-7) or P.L.2005, c.264, s.1
19 (C.2A:53A-7.4).

20 EFFECTIVE DATE: The bill would apply to any action filed on or
21 after the effective date, including but not limited to matters where
22 the statute of limitations has expired and matters filed with a court
23 that have not yet been dismissed or finally adjudicated as of the
24 effective date.

25 The bill would revive any action that was previously dismissed
26 on grounds that the applicable statute of limitations had expired for
27 a period of two years following the effective date.

28 The bill would not revive any action previously dismissed on
29 grounds other than the statute of limitations or revive any action
30 that has been finally adjudicated.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 3648

STATE OF NEW JERSEY

DATED: MARCH 11, 2019

The Assembly Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill No.3648.

This substitute bill would extend the statute of limitations in civil actions for sexual abuse claims, as well as create a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill would also expand the categories of potential defendants in civil actions, and for some actions permit retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The following section-by-section summary of the bill's provisions further details its scope and application to lawsuits which could be filed beginning on December 1, 2019, the bill's effective date.

Section 1: This section amends the current law's general two-year statute of limitations for personal injury claims, N.J.S.2A:14-2, in order to indicate an exception for the new, extended statute of limitations periods detailed in section 2 of the bill.

Section 2 - Child and Adult Victims: This section creates the new, extended statute of limitations periods for sexual abuse, one of which would apply to persons who were abused when minors under the age of 18 years, and one of which would apply to persons who were abused after reaching 18 years of age. It would prohibit lawsuits to proceed as a class action, due to the particular circumstances unique to each person's abuse, and privately negotiated settlements of abuse claims on a class basis would be void and unenforceable. This section also provides guidance as to the retroactive application of potential new standards of liability created by the bill for lawsuits that could be filed in accordance with the new statute of limitations periods.

Child Victim – For abuse that occurred prior to, on or after the bill's effective date, a lawsuit would need to be filed within 37 years after the child victim turns 18 years of age (filed by the victim's 55th birthday), or within seven years of discovering the injury and its cause if the end date of the seven-year period would occur after the victim turns 55 years of age. Since the extended

statute of limitations is retroactive to cover past acts of abuse, any child victim of past abuse who is under the age of 55 years when the bill takes effect, or who will reach 55 years of age sometime after the bill takes effect, and who is aware of the injury and its cause could file a suit; the “reasonable discovery” requirement would only apply if the victim filed suit after turning 55 years of age due to a delayed discovery of the injury and its cause.

This date of reasonable discovery (no more than seven years prior to filing suit) could be challenged, triggering the need for the date to be judicially determined by a Lopez hearing in order to properly find whether the lawsuit was filed in time. See Lopez v. Swyer, 62 N.J. 267 (1973) (establishing objective, reasonable person standard to determine when injured party knew or should have known sufficient factors about injury to trigger running of statute of limitations); R.L. v. Voytac, 199 N.J. 285 (2009) (adding a second layer of analysis to Lopez hearing for sexual abuse lawsuits to consider several subjective factors concerning the individual victim as grounds for tolling statute of limitations).

The bill would establish retroactive application of the standard of liability set forth in the Charitable Immunity Act, section 1 of P.L.1959, c.90 (C.2A:53A-7), as amended by the bill in section 5. This could create, for child victim lawsuits filed under the new, extended statute of limitations, additional retroactive liability for non-profit organizations organized exclusively for religious, charitable, educational, or hospital purposes concerning willful, wanton or grossly negligent acts resulting in abuse that occurred prior to August 8, 2006. That date is when the New Jersey Supreme Court decided the case of Hardwicke v. American Boychoir School, 188 N.J. 69 (2006), and found for the first time that the Charitable Immunity Act does not bar lawsuits against organizations based on such aggravated forms of wrongful conduct; it only bars suits based on “simple” or “standard” negligent conduct (with some statutorily carved out exceptions). Id. at 96-97. Prior to this decision, the Supreme Court and lower courts found that the act did shield organizations from liability for gross negligence and even intentional conduct committed by its trustees, directors, officers, employees, agents, servants, or volunteers. See Schultz v. Roman Catholic Archdiocese, 95 N.J. 530, 535-536 (1984); Monaghan v. Holy Trinity Church, 275 N.J. Super. 594 (App. Div. 1994). The bill’s amendment to the Charitable Immunity Act, to be applied retroactively, recognizes the current interpretation and scope of organizational liability based on Hardwicke.

The retroactive expansion of organizational liability under this section does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as they were always generally liable for their own willful, wanton or grossly negligent acts, and this more-than-

negligence liability standard would remain the same following the bill's enactment. Such persons were added to section 1 of P.L.1959, c.90 (C.2A:53A-7) by the enactment of P.L.1995, c.183 (effective July 24, 1995), but only granted immunity for acts amounting to simple negligence.

A subcategory of such persons, the uncompensated trustees, directors, officers, or voluntary members serving on the boards or other governing bodies of non-profit organizations, would also not be impacted by the retroactive organizational liability. These uncompensated leaders were provided an earlier immunity for their own acts of negligence, and even gross negligence, resulting from the performance of their duties of office pursuant to a supplement to the Charitable Immunity Act, P.L.1987, c.87 (C.2A:53A-7.1) (effective April 6, 1987); these people can only be held liable for acts amounting to a "reckless disregard" of their duties, which "conduct [is a] degree[] of civil culpability greater than gross negligence." See Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 365-366 (2016).

Additionally, the bill establishes retroactive application of an exception to the Charitable Immunity Act set forth in P.L.2005, c.264 (C.2A:53A-7.4 et seq.), making non-profit organizations liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18 years. This liability for simple negligence, when first enacted by P.L.2005, c.264, took effect on January 5, 2006, and applied prospectively only. See P.L.2005, c.264, s.2 (C.2A:53A-7.5). However, as amended by this bill in section 6, organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child could be applied retroactively in lawsuits for abuse occurring prior to the bill's effective date, which also means it could be applied retroactively to acts of abuse occurring prior to the effective date of P.L.2005, c.264.

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, including the aforementioned subcategory of uncompensated leaders, as these persons, who are not referenced in the relevant statutory provisions, are not intended to be subject to liability for acts of mere negligence in lawsuits concerning the hiring, supervision, or retention of an individual resulting in sexual abuse against a child. The standard immunity for negligent acts provided to such persons by the Charitable Immunity Act, as amended in 1995 and earlier supplemented in 1987, as explained above, is not pierced by the exception established in P.L.2005, c.264 (C.2A:53A-7.4 et seq.). Additionally, in any such lawsuit involving acts of sexual abuse that pre-date the statutory negligence immunity provided to such

persons, such lawsuit would still only be permitted against the non-profit organization because the retroactively applied organizational liability of P.L.2005, c.264 would be the basis of the suit, and not any form of pre-statutory common law negligence liability.

Adult Victim – For abuse committed against a person 18 years of age or older that occurred prior to, on or after the bill’s effective date, a lawsuit would need to be filed within seven years of discovering the injury and its cause. The same “reasonable discovery” requirement described above that could apply to lawsuits involving child victims, and the possible use of a Lopez hearing to judicially determine the discovery date, if needed, would apply to adult victim suits filed under the new, extended statute of limitations.

The retroactive application of the amended Charitable Immunity Act, per section 5, would also apply to adult victim suits filed under the new, extended statute of limitations (adult victims could not bring suit under the charitable immunity exception based upon the negligent hiring, supervision, or retention of a person resulting in abuse, as amended by section 6, because such a cause of action is only available to child victims).

Section 3 - Child Victim: This section applies the new, extended statute of limitations period for child victims of abuse detailed in section 2 of the bill (suit must be filed by the 55th birthday, or within seven years of discovering the injury) to lawsuits brought by children, through a parent, guardian, or advocacy organization, or personally upon turning 18 years of age, for the following forms of intentional (willful) sexual exploitation that are intended to target the child pornography industry:

- permitting, enticing or coercing a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner or may be part of an exhibition or performance;

- photographing or filming a child in a prohibited sexual act or in the simulation of such an act or who uses any device to reproduce or reconstruct the image of the child in a prohibited sexual act or in the simulation of such an act; or

- knowingly receiving, for the purpose of selling or knowingly selling, procuring, manufacturing, giving, providing, lending, trading, mailing, delivering, transferring, publishing, distributing, circulating, disseminating, presenting, exhibiting, advertising, offering or agreeing to offer any photograph, film, videotape or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act. See P.L.1992, c.7, ss.2 and 3 (C.2A:30B-2 and 2A:30B-3).

As any such cause of action involves intentional action on the part of the personal abuser or organizational entity under which the

sexual exploitation occurs, it does not create any liability based on merely negligent acts resulting in abuse.

Section 4 - Child Victim: This section amends the Child Sexual Abuse Act, section 1 of P.L.1992, c.109 (C.2A:61B-1), to apply the new, extended statute of limitations period for child victims of abuse detailed in section 2 (suit must be filed by the 55th birthday, or within seven years of discovering the injury) to lawsuits filed against two specific categories of abusers: (1) the “active” abuser, being the person who inflicted the abuse; and (2) the “passive” abuser, being a “parent, resource family parent, guardian or other person standing in loco parentis” who “knowingly permits or acquiesces” to the abuse by an active abuser. See Hardwicke v. American Boychoir Sch., 188 N.J. at 86.

Under the Child Sexual Abuse Act, the phrase “person standing in loco parentis” may provide for organizational liability for passive abuse, because the use of “person,” per the definition set forth in R.S.1:1-2, includes private and public corporations (e.g., a county or municipality) as well as individuals. See Hardwicke v. American Boychoir Sch., 188 N.J. at 91-93; J.H. v. Mercer County Youth Detention Ctr., 396 N.J. Super. 1, 10-12 (App. Div. 2007). However, under the Child Sexual Abuse Act as currently written, this “in loco parentis” liability (meaning in place of a parent, Black’s Law Dictionary 787 (6th ed. 1990)) is limited, in that the organization’s setting in which the abuse knowingly occurred must also be deemed to be a “household.” On this point, courts have determined a private, full-time boarding school and a county’s full-time youth detention center to each be a “household” establishing liability, but determined that a public school is not a “household” based on the school’s more limited, temporary custody and control of children only during school hours. See American Boychoir Sch., 188 N.J. at 93-94 (discussing private boarding school); J.H. v. Mercer County Youth Detention Ctr., 396 N.J. Super. at 14-15 (discussing full-time detention center); D.M. v. River Dell Regional High Sch., 373 N.J. Super. 639, 649 (App. Div. 2004) (discussing public school). The “household” limitation would be deleted by the bill, so that “passive” abuser liability could apply to any individual person, or private or public entity, who takes custody and control of children even on a limited, temporary basis, so long as this custody and control is sufficient to establish the person or entity as being “in loco parentis.”

Both an “active” and “passive” abuser are subject to a knowing (willful) standard of liability, and therefore this section does not create any liability based on merely negligent acts resulting in abuse. Also of note, a cause of action under this section based on the expanded liability against a “passive” abuser, removing the “household” setting as a requirement for liability, is not listed in section 2 or section 9 concerning the retroactive application of

certain newly created forms of liability to lawsuits brought under the new, extended statute of limitations or, as further detailed below, during a two-year filing window available for otherwise time-barred claims (see comments for those sections), and is intended to only apply prospectively.

Section 5 - Child and Adult Victims: This section amends the Charitable Immunity Act, section 1 of P.L.1959, c.90 (C.2A:53A-7), to add language to subsection c., indicating that non-profit organizations are expressly liable for willful, wanton or grossly negligent acts. This codifies what was already understood via case law since August 8, 2006 - that organizational charitable immunity only applies to protect organizations from lawsuits claiming injury based on merely negligent acts, not more aggravated forms of wrongful conduct, such as willful, wanton or grossly negligent acts. See *Hardwicke v. American Boychoir Sch.*, 188 N.J. at 96-97 (2006). The added language may establish retroactive liability for lawsuits filed under the new, extended statute of limitations periods, or filed during the below described two-year filing window for otherwise time-barred claims, concerning abusive acts that occurred prior to August 8, 2006, as detailed in the comments provided for section 2 and section 9 of the bill.

Section 6 - Child Victim: This section amends an existing exception to the Charitable Immunity Act set forth in P.L.2005, c.264 (C.2A:53A-7.4 et seq.), making non-profit organizations liable for acts of mere negligence in the hiring, supervision, or retention of an employee, agent, or servant resulting in sexual abuse committed against a minor under the age of 18. This liability for simple negligence, when first enacted by P.L.2005, c.264, took effect on January 5, 2006, and applied prospectively only. See P.L.2005, c.264, s.2 (C.2A:53A-7.5). However, as amended by the bill (by adding subsection b.), organizational liability for an act of negligently hiring, supervising, or retaining a person resulting in abuse against a child could be applied retroactively in lawsuits filed under the new, extended statute of limitations period (suit must be filed by the 55th birthday, or within seven years of discovering the injury) or during the below described two-year window, per section 2 or section 9, respectively, for abuse occurring prior to the bill's effective date, which also means it could be applied retroactively to acts of abuse occurring prior to the effective date of P.L.2005, c.264 (January 5, 2006).

This retroactive expansion of organizational liability does not create any additional retroactive liability for trustees, directors, officers, employees, agents, servants, or volunteers, as these persons, who are not referenced in the relevant statutory provisions, are not intended to be subject to liability for acts of mere negligence in lawsuits concerning the hiring, supervision, or retention of an individual resulting in sexual abuse against a child. The standard

immunity for negligent acts provided to such persons by the Charitable Immunity Act, as amended in 1995 and earlier supplemented in 1987, as explained in the comments for section 2, is not pierced by the exception established in P.L.2005, c.264 (C.2A:53A-7.4 et seq.). Additionally, in any such lawsuit involving acts of sexual abuse that pre-date the statutory negligence immunity provided to such persons, such lawsuit would still only be permitted against the non-profit organization because the retroactively applied organizational liability of P.L.2005, c.264 would be the basis of the suit, and not any form of pre-statutory common law negligence liability.

Section 7 – Child and Adult Victims: This section provides that the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., or any other law, that may provide some form of governmental immunity from lawsuits based on injuries resulting from acts of sexual abuse are inapplicable, so that any public entity, as defined in the “New Jersey Tort Claims Act,” may be held liable in any such suit in the same manner as a private organization.

Section 8 – Child and Adult Victims: This section eliminates the “New Jersey Tort Claims Act” two-year statute of limitations period, set forth in N.J.S.59:8-8, for bringing a sexual abuse lawsuit against a public entity, as well as any of the act’s procedural requirements, such as the 90-day period for filing notice of a claim of liability against a public entity for such lawsuits; the process of filing a lawsuit with service upon the liable public entity or entities would thus be the same as when suing a private organization. Public entities would also be subject, just like a private organization, to the new, extended statute of limitations periods for child and adult victims of abuse detailed in section 2 (child victim - suit must be filed by the 55th birthday, or within seven years of discovering the injury; adult victim – suit must be filed within seven years of discovering the injury).

Section 9 - Child and Adult Victims: This section creates a two-year window for lawsuits to be filed for acts of sexual abuse that occurred prior to the bill’s effective date which would otherwise be time-barred, even after applying (retroactively) the new, extended statute of limitations period for child and adult victims of abuse detailed in section 2 (child victim - suit must be filed by the 55th birthday, or within seven years of discovering the injury; adult victim – suit must be filed within seven years of discovering the injury).

The same retroactive application of the amended Charitable Immunity Act, per section 5, and the amended charitable immunity exception based upon the negligent hiring, supervision, or retention of a person resulting in abuse, per section 6, that would apply to lawsuits

filed during any applicable extended statute of limitations period would also apply to child and adult victim suits filed during the two-year window established by this section (see comments on retroactivity under section 2, section 5, and section 6).

As with lawsuits filed in accordance with any applicable statute of limitations pursuant to section 2, suits otherwise time-barred that were filed during the two-year window could not proceed as a class action, due to the particular circumstances unique to each person's abuse, and privately negotiated settlements on a class basis concerning abuse claims that could be brought during the two-year window would be void and unenforceable.

Section 10 - Effective Date: The effective date section provides that the bill would take effect on December 1, 2019, and beginning on that date lawsuits could be filed in accordance with the bill's provisions, as described above.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3648
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MARCH 26, 2019

SUMMARY

- Synopsis:** Extends statute of limitations in civil actions for sexual abuse claims; expands categories of potential defendants in civil actions; creates two-year window for parties to bring previously time-barred actions based on sexual abuse.
- Types of Impact:** Annual State expenditure and revenue increases, General Fund. Annual expenditure increases to local governmental units and school districts.
- Agencies Affected:** State and local governmental units, including school districts.

Office of Legislative Services Estimate

Fiscal Impact	
Annual State Expenditure Increase	Indeterminate
Annual State Revenue Increase	Indeterminate
Annual Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) expects that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments. The OLS, however, has no information on the number of cases that may be brought against the State, school districts, and local units of government; the number of cases that may result in a settlement or court-awarded damages against governmental entities; and the amount of settlements and damages awarded. In part, the magnitude of the additional expenditures will depend on jurisprudence to be developed.
- For governmental entities that self-insure, such as the State, each individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars.
- Local governmental units and school districts are either self-insured or pay liability insurance premiums. Depending on the number of claims against local governmental units and school

districts and the amount of any settlements and judgements, it would be reasonable to expect that annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially.

- The State Judiciary will incur an indeterminate increase in annual operating expenditures, as additional resources will likely have to be allocated to an increased civil caseload. The OLS also anticipates collections from court filing fees to grow in tandem with the caseload, although that impact is likely to be nominal.

BILL DESCRIPTION

This bill extends the statute of limitations period in civil actions for sexual abuse claims and creates a two-year window for parties to bring previously time-barred actions based on sexual abuse. The bill also expands the categories of potential defendants in civil actions, and for some actions permits retroactive application of standards of liability to past acts of abuse for which liability did not previously exist. The provisions of the bill apply to lawsuits which could be filed beginning on December 1, 2019.

Among its provisions, the bill voids the existing immunity of governments from lawsuits based on injuries resulting from acts of sexual abuse. Consequently, any public entity may be held liable in any such suit in the same manner as a private organization. The bill also eliminates the current statutory two-year statute of limitations period for bringing a sexual abuse lawsuit against a public entity, as well as certain other related procedural requirements. Public entities are also subject, just like a private organization, to the new, extended statute of limitations periods for victims of abuse (child victims must file suit by the 55th birthday, or within seven years of discovering the injury; adult victims must file suit within seven years of discovering the injury).

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS expects that the bill will expose the State, school districts, and local units of government to civil claims that may result in added legal defense expenditures and substantial settlements and judgments against affected governments. The OLS, however, has no information on the number of cases that may be brought against the State, school districts, and local units of government; the number of cases that may result in a settlement or court-awarded damages against governmental entities; and the amount of settlements and damages awarded.

In part, the OLS' uncertainty is attributable to jurisprudence that will have to be developed on the extent to which governmental entities and their individual employees and officials will become civilly liable for failing to provide security deemed adequate at public facilities, on public lands, or generally; and exercising discretion in not opting for the most severe course of action allowable vis-à-vis suspects, defendants, and inmates eligible for parole.

The OLS notes that because of the two-year window for parties to bring previously time-barred actions; the State, school districts, and local units of government are likely to face an elevated number of claims that will have to be defended in the first few years after the bill's enactment. Once these retroactive, previously impermissible claims will have been adjudicated or settled, the count of additional cases filed as a result of this bill will normalize.

Each individual settlement or judgment could produce expenditures in the several hundred of thousands of dollars, if not millions of dollars. For example, a review of payments out of the State's Tort Claims Liability Fund between FY 2013 and FY 2015 shows three payments related to sexual abuse and assault, notwithstanding the immunity currently granted to the State: \$175,000 in a sexual assault case in FY 2015, \$200,000 in a sexual abuse case in FY 2014, and \$3,425,000 in a sexual abuse in foster care case in FY 2013.

State Impact: The OLS does not have sufficient information to quantify the increase in annual expenditures the bill will cause to the State. By way of background, the State is self-insured and does not purchase liability insurance policies. The Tort Claims Liability Fund provides funding for the payment of claims arising from wrongful actions or omissions. The FY 2019 appropriation to pay for claim settlements against State entities is \$22.4 million. Budget language provides that additional funds may be appropriated for the purpose of paying tort claims as recommended by the Attorney General and as determined by the Director of the Office of Management and Budget.

In addition, the Judiciary will incur an indeterminate increase in annual operating expenditures, as additional resources will likely have to be allocated to an increased civil caseload. The OLS also anticipates collections from court filing fees to grow in tandem with the caseload, although that impact is likely to be nominal.

Local Government and School District Impact: The OLS does not have sufficient information to quantify the increase in annual expenditures the bill will cause to local governmental units and school districts. Some local governments and school districts are self-insured, while others pay liability insurance premiums. Depending on the number of claims against local governmental units and school districts and the amount of any settlements and judgements, it would be reasonable to expect that annual liability insurance premiums for all local governmental units and school districts that do not self-insure will increase, perhaps even substantially. Local governmental units and school districts that self-insure, in turn, will have to defend themselves against additional tort claims and pay additional, potentially substantial, settlements and judgments.

School districts may be the most exposed to the filing of additional tort claims if the bill were enacted, given the nature of their responsibilities. To underscore that point, 465 teaching applicants and employees were disqualified from teaching over the past five years, with 189 having been disqualified for sexual offenses and 276 for child abuse.

Section: *Judiciary*

Analyst: *Sarita Welsh*
 Associate Counsel

Approved: *Frank W. Haines III*
 Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**GOVERNOR'S STATEMENT UPON SIGNING
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 477**

Today I am signing Senate Committee Substitute for Senate Bill No. 477, 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 that goes into effect upon the bill's enactment. I recognize that this issue has evoked strong passions on both sides, as supporters of the bill rightly note that it greatly increases the ability of victims of sexual abuse to pursue justice through the court system. Opponents argue that by exposing religious and nonprofit organizations to potentially massive financial liabilities, the bill may have the unintended effect of inhibiting these organizations from providing the services that many vulnerable New Jerseyans rely on. I take these concerns seriously, but I cannot deny victims the ability to seek redress in court for sexual abuse that often leaves trauma lasting a lifetime. I am confident that our judicial system is the right forum to assess these claims fairly and impartially.

I am also signing the bill based on a commitment from the bill's sponsors to introduce and swiftly pass a bill that will correct an error in the section of the bill relating to the liability of public entities. This section inadvertently fails to establish a standard of proof for cases involving claims filed against public entities. If unaddressed, the lack of clarity would create uncertainty and likely lead to additional litigation. I have received assurances that the Legislature will correct this omission by clarifying that public entities should be held to the same standard of liability that is applied to religious and nonprofit organizations. Applying a different standard would be unjustified.

I thank the bill's sponsors for their commitment to tackling this issue, as well as the advocates on both sides for their activism and engagement. I continue to believe that vigorous debate based on policy -- even when dealing with sensitive and controversial issues -- makes our State's democracy stronger.

Date: May 13, 2019

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor



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Newark, N.J.

Governor Murphy Signs Legislation Extending the Civil Statute of Limitations for Sexual Abuse Claims in New Jersey

05/13/2019

TRENTON – Governor Phil Murphy today signed legislation (S477) extending the statute of limitations in civil actions for sexual abuse claims. The law also creates a two-year window for parties to bring lawsuits based on sexual abuse that would be time-barred even with the new statute of limitations, and expands the categories of potential defendants in civil actions.

“Survivors of sexual abuse deserve opportunities to seek redress against their abusers,” **said Governor Phil Murphy**. “This legislation allows survivors who have faced tremendous trauma the ability to pursue justice through the court system. I thank the bill’s sponsors for their commitment to tackling this issue, as well as the advocates for their activism and engagement.”

Primary sponsors of the bill include Senators Joseph Vitale and Nicholas Scutari; and Assemblymembers Annette Quijano, Valerie Vainieri Huttle, and Mila Jasey.

“This law would not have made it to the governor’s desk today, if it wasn’t for the tireless efforts of survivors, advocates and organizations for over a decade. This is not my bill or Senator Scutari’s bill, this is their bill,” **said Senator Vitale**. “Their work is an affirmation for all survivors of sexual assault, past and present, and today, New Jersey is a more just state. I want to thank everyone who has made this day possible. Sexual assault and rape are crimes entirely unique and they should be treated as such, particularly when it involves children. We know entirely too much today about the suppression of childhood trauma to be able to morally hold their justice to the same legal limitations as a victim of robbery. The standard statute of limitations, is simply, is painfully inadequate. Today, thankfully, survivors in New Jersey have the opportunity to seek justice.”

“It’s time to stand up for the survivors of sexual assault,” **said Senator Scutari**. “If our institutions cannot keep their members safe or hold their employees accountable, then we will. With this bill, we are making it clear; New Jersey stands with the survivors, first.”

“This bill is about allowing victims the time to get the justice they deserve,” **said Assemblywoman Quijano**. “Because those who have been sexually abused often suppress their memories for years or don’t connect their injuries to their abuse, they need much more time to file a civil action. This new law gives them that time.”

“Sexual abuse survivors often struggle for years to come to terms with their abuse, especially child victims,” **said Assemblywoman Vainieri Huttle**. “We must allow victims the time to realize the damage that has been done to them both physically and mentally. Survivors of sexual abuse deserve a fair opportunity to seek justice.”

“We have an obligation to hold organizations and institutions accountable for the bad actions of their employees,” **said Assemblywoman Jasey**. “We must also stand up for victims of sexual assault, particularly those who suffered the assault as a child. Often times, survivors continue to suffer for years as they block memories of the horror of rape. With this new law, New Jersey is making it clear that we put victims first.”

“Put simply, this bill gives survivors more options and opportunity to pursue justice. For too long, survivors’ choice was restricted by New Jersey’s insufficient two-year civil statute of limitations for sexual assault,” **said Patricia Teffenhart, Executive Director of the New Jersey Coalition Against Sexual Assault (NJCASA)**. “Adding this trauma-informed policy to the portfolio of bills we’ve passed over the last few years is a significant step forward and is a direct result of over a decade’s worth of advocacy from survivors. It is their tenacity we celebrate today and we’re thankful for Senator Vitale, Assemblywoman Quijano, Senate President Sweeney, Assembly Speaker Coughlin, and Governor Murphy for ensuring that justice delayed no longer means justice denied.”

“SNAP commends Governor Phil Murphy, Senator Joseph Vitale, Assemblywoman Annette Quijano, NJ SNAP leader Mark Crawford, and the hundreds of survivors and advocates who made this dramatic reform of the statute of limitations in New Jersey possible,” **said Zach Hiner, Executive Director of Survivors Network of Those Abused by Priests (SNAP)**. “This new law will be one of the best in the nation, granting all sexual abuse survivors the opportunity to access the justice system, and provides an example for other states of concrete legislation they can pass that will help survivors of sexual abuse heal while creating safer, more informed communities.”

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