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**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

**Also of possible interest to researchers:**

Committee meeting of New Jersey Legislative Select Oversight Committee : the Committee will hear testimony from invited guests concerning the challenges facing survivors of sexual assault, as well as hiring, vetting, and complaint procedures within State government [February 26, 2019, Trenton, New Jersey] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit.

Call number: 974.90 I62, 2019f

Online at: <http://hdl.handle.net/10929/50492>

RWH/CL

P.L. 2019, CHAPTER 239, *approved August 9, 2019*  
Assembly, No. 5392 (*First Reprint*)

1 AN ACT concerning civil actions against public entities and public  
2 employees arising from acts of sexual abuse and amending  
3 P.L.2019, c.120.

4

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

7

8 1. Section 7 of P.L.2019, c.120 (C.59:2-1.3) is amended to read  
9 as follows:

10 7. a. Notwithstanding any <sup>1</sup>**[other]**<sup>1</sup> provision of <sup>1</sup>**[law to the**  
11 **contrary, including but not limited to]**<sup>1</sup> the "New Jersey Tort  
12 Claims Act," N.J.S.59:1-1 et seq. **[,]** <sup>1</sup>, to the contrary<sup>1</sup> :

13 (1) <sup>1</sup>**[any]**<sup>1</sup> immunity from civil liability granted <sup>1</sup>by that act<sup>1</sup> to  
14 a public entity [is liable in an action at law for an injury resulting  
15 from the commission of] or public employee shall not apply to an  
16 action at law <sup>1</sup>[claiming that a willful, wanton or grossly negligent  
17 act of a public entity or public employee resulted in] for damages  
18 as a result of<sup>1</sup> a sexual assault, any other crime of a sexual nature, a  
19 prohibited sexual act as defined in section 2 of P.L.1992, c.7  
20 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992,  
21 c.109 (C.2A:61B-1) being committed against a person <sup>1</sup>,which was  
22 caused by a willful, wanton or grossly negligent act of the public entity  
23 or public employee<sup>1</sup> ; and

24 (2) <sup>1</sup>**[any]**<sup>1</sup> immunity from civil liability granted <sup>1</sup>by that act<sup>1</sup> to a  
25 public entity shall not apply to an action at law <sup>1</sup>[claiming that the  
26 negligent hiring, supervision or retention of any public employee  
27 resulted in] for damages as a result of<sup>1</sup> a sexual assault, any other  
28 crime of a sexual nature, a prohibited sexual act as defined in section 2  
29 of 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) being committed against a minor  
31 under the age of 18 <sup>1</sup>, which was caused by the negligent hiring,  
32 supervision or retention of any public employee<sup>1</sup> .

33 b. Every action at law involving a public entity or public  
34 employee as described in subsection a. of this section shall be  
35 subject to the statute of limitations set forth in section 2 of  
36 P.L.2019, c.120 (C.2A:14-2a), and may be brought during the two-  
37 year period set forth in subsection a. of section 9 of P.L.2019, c.120  
38 (C.2A:14-2b), notwithstanding that the action would otherwise be  
39 barred through application of the statute of limitations.  
40 (cf: P.L.2019, c.120, s.7)

**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

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ABU committee amendments adopted June 17, 2019.

1       2. This act shall take effect on December 1, 2019, the same day  
2 that P.L.2019, c.120 (C.2A:14-2a et al.) takes effect, and shall apply  
3 to any cause of action filed on or after that date, as well as any  
4 cause of action filed prior to that effective date that has not yet been  
5 finally adjudicated or dismissed by a court as of that effective date.

6

7

8

9

10       Establishes new liability standards in sexual abuse lawsuits filed  
11 against public entities and public employees.

# ASSEMBLY, No. 5392

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 13, 2019

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**SYNOPSIS**

Establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees.

**CURRENT VERSION OF TEXT**

As introduced.



A5392 QUIJANO

2

1 AN ACT concerning civil actions against public entities and public  
2 employees arising from acts of sexual abuse and amending  
3 P.L.2019, c.120.

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

7  
8 1. Section 7 of P.L.2019, c.120 (C.59:2-1.3) is amended to read  
9 as follows:

10 7. a. Notwithstanding any other provision of law to the  
11 contrary, including but not limited to the "New Jersey Tort Claims  
12 Act," N.J.S.59:1-1 et seq. **【.】** :

13 (1) any immunity from civil liability granted to a public entity  
14 **【is liable in an action at law for an injury resulting from the**  
15 **commission of】** or public employee shall not apply to an action at  
16 law claiming that a willful, wanton or grossly negligent act of a  
17 public entity or public employee resulted in a sexual assault, any  
18 other crime of a sexual nature, a prohibited sexual act as defined in  
19 section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined  
20 in section 1 of P.L.1992, c.109 (C.2A:61B-1) being committed  
21 against a person; and

22 (2) any immunity from civil liability granted to a public entity  
23 shall not apply to an action at law claiming that the negligent hiring,  
24 supervision or retention of any public employee resulted in a sexual  
25 assault, any other crime of a sexual nature, a prohibited sexual act as  
26 defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as  
27 defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) being committed  
28 against a minor under the age of 18.

29 b. Every action at law involving a public entity or public  
30 employee as described in subsection a. of this section shall be  
31 subject to the statute of limitations set forth in section 2 of  
32 P.L.2019, c.120 (C.2A:14-2a), and may be brought during the two-  
33 year period set forth in subsection a. of section 9 of P.L.2019, c.120  
34 (C.2A:14-2b), notwithstanding that the action would otherwise be  
35 barred through application of the statute of limitations.

36 (cf: P.L.2019, c.120, s.7)

37  
38 2. This act shall take effect on December 1, 2019, the same day  
39 that P.L.2019, c.120 (C.2A:14-2a et al.) takes effect, and shall apply  
40 to any cause of action filed on or after that date, as well as any  
41 cause of action filed prior to that effective date that has not yet been  
42 finally adjudicated or dismissed by a court as of that effective date

43  
44 STATEMENT

45  
46 This bill establishes new liability standards in sexual abuse  
47 lawsuits filed against public entities and public employees. These  
48 new standards are identical to the liability standards applied to non-

**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 profit organizations, and their officers, employees and other agents,  
2 based on exceptions to the immunity granted to such organizations  
3 and agents under the Charitable Immunity Act, P.L.1959, c.90  
4 (C.2A:53A-7 et seq.), as revised by P.L.2019, c.120 (C.2A:14-2a et  
5 al.).

6 Thus, a public entity or public employee could be held liable for  
7 willful, wanton or grossly negligent acts resulting in a “sexual  
8 assault, any other crime of a sexual nature, a prohibited sexual act  
9 as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual  
10 abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1)”  
11 being committed against a person; and a public entity could be held  
12 liable for a claim that its negligent hiring, supervision or retention of  
13 any public employee resulted in any such form of sexual abuse being  
14 committed against a minor under the age of 18 years (there would be  
15 no such “simple” negligence liability for any public employees under  
16 this cause of action, just like no there is no liability for a non-profit  
17 organization’s agents). See P.L.2005, c.264, s.1 (C.2A:53A-7.4)  
18 (cause of action for negligent hiring, supervision or retention permitted  
19 against the nonprofit organization otherwise immune from negligence  
20 suits under the Charitable Immunity Act).

21 The bill would take effect on December 1, 2019, the same  
22 effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which  
23 enactment, *inter alia*, (1) creates new, extended statute of  
24 limitations periods for civil actions by child and adult victims of  
25 sexual abuse (child victim – suit must be filed by the 55th birthday,  
26 or within seven years of discovering the injury, whichever date is  
27 later; adult victim – suit must be filed within seven years of  
28 discovering the injury), and (2) establishes a two-year window  
29 during which actions may be commenced even though they would  
30 otherwise be time-barred, even after using the appropriate new,  
31 extended statute of limitations period. The bill expressly indicates  
32 that once lawsuits can commence against public entities and public  
33 employers beginning on December 1, 2019, these suits, and any  
34 suits previously filed that have not yet been finally adjudicated or  
35 dismissed, would be subject to the new, extended statute of  
36 limitations, and lawsuits could, if otherwise time-barred, be brought  
37 during the two-year window.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 5392

# STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Assembly Judiciary Committee reports favorably Assembly Bill No. 5392.

This bill establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees. These new standards are identical to the liability standards applied to non-profit organizations, and their officers, employees and other agents, based on exceptions to the immunity granted to such organizations and agents under the Charitable Immunity Act, P.L.1959, c.90 (C.2A:53A-7 et seq.), as revised by P.L.2019, c.120 (C.2A:14-2a et al.).

Thus, a public entity or public employee could be held liable for willful, wanton or grossly negligent acts resulting in a “sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1)” being committed against a person; and a public entity could be held liable for a claim that its negligent hiring, supervision or retention of any public employee resulted in any such form of sexual abuse being committed against a minor under the age of 18 years (there would be no such “simple” negligence liability for any public employee under this cause of action, just as there is no liability for a non-profit organization’s agents). See P.L.2005, c.264, s.1 (C.2A:53A-7.4) (cause of action for negligent hiring, supervision or retention permitted against the nonprofit organization otherwise immune from negligence suits under the Charitable Immunity Act).

The bill would take effect on December 1, 2019, the same effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which enactment, *inter alia*, (1) creates new, extended statute of limitations periods for civil actions by child and adult victims of sexual abuse (child victim – suit must be filed by the 55th birthday, or within seven years of discovering the injury, whichever date is later; adult victim – suit must be filed within seven years of discovering the injury), and (2) establishes a two-year window during which actions may be commenced even though they would otherwise be time-barred, even after using the appropriate new, extended statute of limitations period. The bill expressly indicates that once lawsuits can commence against public entities and public employers beginning on December 1, 2019, these suits, and any



suits previously filed that have not yet been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations, and lawsuits could, if otherwise time-barred, be brought during the two-year window.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 5392

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Assembly Budget Committee reports favorably Assembly Bill No. 5392, with committee amendments.

This bill, as amended, establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees. It would expressly provide that the statutory immunity from lawsuits granted to public entities and public employees pursuant to the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., would not be applicable with respect to the following types of sexual abuse lawsuits:

- an action at law for damages against a public entity or public employee as a result of sexual abuse *being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee*; or

- an action at law for damages against a public entity as a result of sexual abuse *being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee*.

These types of lawsuits are the same types of lawsuits for which the general statutory immunity of the Charitable Immunity Act, P.L.1959, c.90 (C.2A:53A-7 et seq.) does not apply, thereby permitting such lawsuits to proceed against non-profit organizations organized exclusively for religious, charitable, educational, or hospital purposes, and their trustees, directors, officers, employees, agents, servants and volunteers.

Based on the amendatory language set forth in the bill, any available immunity for public entities and public employees from some source of law other than the “New Jersey Tort Claims Act” could be raised by public entities and public employees as a defense to any of the aforementioned types of sexual abuse lawsuits.

The bill would take effect on December 1, 2019, the same effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which enactment, *inter alia*, (1) creates new, extended statute of limitations periods for civil actions by child and adult victims of sexual abuse (child victim – suit must be filed by the 55th birthday, or within seven years of discovering the injury, whichever date is later; adult victim – suit must be filed within seven years of discovering the injury), and (2) establishes a two-year window

during which actions may be commenced even though they would otherwise be time-barred, even after using the appropriate new, extended statute of limitations period. The bill expressly indicates that once lawsuits can commence against public entities and public employees beginning on December 1, 2019, these suits, and any suits previously filed that have not yet been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations, and lawsuits could, if otherwise time-barred, be brought during the two-year window.

#### COMMITTEE AMENDMENTS

The committee amendments to the bill:

- expressly provide that only the specific immunity from lawsuits granted to public entities and public employees pursuant to the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., is not applicable with respect to the types of sexual abuse lawsuits described in the bill, thus any available immunity from some other source of law could be raised by public entities and public employees as a defense to any such lawsuits; and

- reword the bill’s descriptions of the above described sexual abuse lawsuits for which public entities and public employees could not claim statutory immunity under the “New Jersey Tort Claims Act” to make these descriptions more consistent with how other causes of action are described under that act.

#### FISCAL IMPACT:

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.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 5392

### STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JUNE 24, 2019

#### SUMMARY

- Synopsis:** Establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees.
- Type 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.
- 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 establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees. It would expressly provide that the statutory immunity from lawsuits granted to public entities and public employees pursuant to the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., would not be applicable with respect to the following types of sexual abuse lawsuits:

- an action at law for damages against a public entity or public employee as a result of sexual abuse *being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee*; or

- an action at law for damages against a public entity as a result of sexual abuse *being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee*.

These types of lawsuits are the same types of lawsuits for which the general statutory immunity of the Charitable Immunity Act, P.L.1959, c.90 (C.2A:53A-7 et seq.) does not apply, thereby permitting such lawsuits to proceed against non-profit organizations organized exclusively for religious, charitable, educational, or hospital purposes, and their trustees, directors, officers, employees, agents, servants and volunteers.

As set forth in the bill, any available immunity for public entities and public employees from some source of law other than the “New Jersey Tort Claims Act” could be raised by public entities and public employees as a defense to any of the aforementioned types of sexual abuse lawsuits.

The bill would take effect on December 1, 2019, the same effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which enactment, *inter alia*, (1) creates new, extended statute of limitations periods for civil actions by child and adult victims of sexual abuse (child victim – suit must be filed by the 55th birthday, or within seven years of discovering the injury, whichever date is later; adult victim – suit must be filed within seven years of discovering the injury), and (2) establishes a two-year window during which actions may be commenced even though they would otherwise be time-barred, even after using the appropriate new, extended statute of limitations period. The bill expressly indicates that once lawsuits can commence against public entities and public employees beginning on December 1, 2019, these suits, and any suits previously filed that have not yet been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations, and lawsuits could, if otherwise time-barred, be brought during the two-year window.

## **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.

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.).

# SENATE, No. 3739

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 16, 2019

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**SYNOPSIS**

Establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees.

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT concerning civil actions against public entities and public  
2 employees arising from acts of sexual abuse and amending  
3 P.L.2019, c.120.

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

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9 as follows:

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11 contrary, including but not limited to the "New Jersey Tort Claims  
12 Act," N.J.S.59:1-1 et seq. **【,】** :

13 (1) any immunity from civil liability granted to a public entity  
14 **【is liable in an action at law for an injury resulting from the**  
15 **commission of】** or public employee shall not apply to an action at  
16 law claiming that a willful, wanton or grossly negligent act of a  
17 public entity or public employee resulted in a sexual assault, any  
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20 in section 1 of P.L.1992, c.109 (C.2A:61B-1) being committed  
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22 (2) any immunity from civil liability granted to a public entity  
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29 b. Every action at law involving a public entity or public  
30 employee as described in subsection a. of this section shall be  
31 subject to the statute of limitations set forth in section 2 of  
32 P.L.2019, c.120 (C.2A:14-2a), and may be brought during the two-  
33 year period set forth in subsection a. of section 9 of P.L.2019, c.120  
34 (C.2A:14-2b), notwithstanding that the action would otherwise be  
35 barred through application of the statute of limitations.

36 (cf: PL2019, c.120, s.7)

37

38 2. This act shall take effect on December 1, 2019, the same day  
39 that P.L.2019, c.120 (C.2A:14-2a et al.) takes effect, and shall apply  
40 to any cause of action filed on or after that date, as well as any  
41 cause of action filed prior to that effective date that has not yet been  
42 finally adjudicated or dismissed by a court as of that effective date.

43

44

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#### STATEMENT

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47 This bill establishes new liability standards in sexual abuse  
48 lawsuits filed against public entities and public employees. These

**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 new standards are identical to the liability standards applied to non-  
2 profit organizations, and their officers, employees and other agents,  
3 based on exceptions to the immunity granted to such organizations  
4 and agents under the Charitable Immunity Act, P.L.1959, c.90  
5 (C.2A:53A-7 et seq.), as revised by P.L.2019, c.120 (C.2A:14-  
6 2a et al.).

7 Thus, a public entity or public employee could be held liable for  
8 willful, wanton or grossly negligent acts resulting in a “sexual  
9 assault, any other crime of a sexual nature, a prohibited sexual act  
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13 liable for a claim that its negligent hiring, supervision or retention of  
14 any public employee resulted in any such form of sexual abuse being  
15 committed against a minor under the age of 18 years (there would be  
16 no such “simple” negligence liability for any public employees under  
17 this cause of action, just like no there is no liability for a non-profit  
18 organization’s agents). See P.L.2005, c.264, s.1 (C.2A:53A-7.4) (cause  
19 of action for negligent hiring, supervision or retention permitted  
20 against the nonprofit organization otherwise immune from negligence  
21 suits under the Charitable Immunity Act).

22 The bill would take effect on December 1, 2019, the same  
23 effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which  
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29 discovering the injury), and (2) establishes a two-year window  
30 during which actions may be commenced even though they would  
31 otherwise be time-barred, even after using the appropriate new,  
32 extended statute of limitations period. The bill expressly indicates  
33 that once lawsuits can commence against public entities and public  
34 employers beginning on December 1, 2019, these suits, and any  
35 suits previously filed that have not yet been finally adjudicated or  
36 dismissed, would be subject to the new, extended statute of  
37 limitations, and lawsuits could, if otherwise time-barred, be brought  
38 during the two-year window.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### SENATE, No. 3739

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 17, 2019

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 3739.

This bill, as amended, establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees. It would expressly provide that the statutory immunity from lawsuits granted to public entities and public employees pursuant to the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., would not be applicable with respect to the following types of sexual abuse lawsuits:

- an action at law for damages against a public entity or public employee as a result of sexual abuse *being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee*; or

- an action at law for damages against a public entity as a result of sexual abuse *being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee*.

These types of lawsuits are the same types of lawsuits for which the general statutory immunity of the Charitable Immunity Act, P.L.1959, c.90 (C.2A:53A-7 et seq.) does not apply, thereby permitting such lawsuits to proceed against non-profit organizations organized exclusively for religious, charitable, educational, or hospital purposes, and their trustees, directors, officers, employees, agents, servants and volunteers.

Based on the amendatory language set forth in the bill, any available immunity for public entities and public employees from some source of law other than the “New Jersey Tort Claims Act” could be raised by public entities and public employees as a defense to any of the aforementioned types of sexual abuse lawsuits.

The bill would take effect on December 1, 2019, the same effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which enactment, *inter alia*, (1) creates new, extended statute of limitations periods for civil actions by child and adult victims of sexual abuse (child victim – suit must be filed by the 55th birthday, or within seven years of discovering the injury, whichever date is later; adult victim – suit must be filed within seven years of discovering the injury), and (2) establishes a two-year window

during which actions may be commenced even though they would otherwise be time-barred, even after using the appropriate new, extended statute of limitations period. The bill expressly indicates that once lawsuits can commence against public entities and public employees beginning on December 1, 2019, these suits, and any suits previously filed that have not yet been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations, and lawsuits could, if otherwise time-barred, be brought during the two-year window.

The committee amendments to the bill:

- expressly provide that only the specific immunity from lawsuits granted to public entities and public employees pursuant to the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., is not applicable with respect to the types of sexual abuse lawsuits described in the bill, thus any available immunity from some other source of law could be raised by public entities and public employees as a defense to any such lawsuits; and

- reword the bill’s descriptions of the above described sexual abuse lawsuits for which public entities and public employees could not claim statutory immunity under the “New Jersey Tort Claims Act” to make these descriptions more consistent with how other causes of action are described under that act.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 3739

### STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JUNE 24, 2019

#### SUMMARY

- Synopsis:** Establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees.
- Type 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.
- 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 establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees. It would expressly provide that the statutory immunity from lawsuits granted to public entities and public employees pursuant to the “New Jersey Tort Claims Act,” N.J.S.59:1-1 et seq., would not be applicable with respect to the following types of sexual abuse lawsuits:

- an action at law for damages against a public entity or public employee as a result of sexual abuse *being committed against a person, which was caused by a willful, wanton or grossly negligent act of the public entity or public employee*; or
- an action at law for damages against a public entity as a result of sexual abuse *being committed against a minor under the age of 18, which was caused by the negligent hiring, supervision or retention of any public employee*.

These types of lawsuits are the same types of lawsuits for which the general statutory immunity of the Charitable Immunity Act, P.L.1959, c.90 (C.2A:53A-7 et seq.) does not apply, thereby permitting such lawsuits to proceed against non-profit organizations organized exclusively for religious, charitable, educational, or hospital purposes, and their trustees, directors, officers, employees, agents, servants and volunteers.

As set forth in the bill, any available immunity for public entities and public employees from some source of law other than the “New Jersey Tort Claims Act” could be raised by public entities and public employees as a defense to any of the aforementioned types of sexual abuse lawsuits.

The bill would take effect on December 1, 2019, the same effective date as P.L.2019, c.120 (C.2A:14-2a et al.), which enactment, *inter alia*, (1) creates new, extended statute of limitations periods for civil actions by child and adult victims of sexual abuse (child victim – suit must be filed by the 55th birthday, or within seven years of discovering the injury, whichever date is later; adult victim – suit must be filed within seven years of discovering the injury), and (2) establishes a two-year window during which actions may be commenced even though they would otherwise be time-barred, even after using the appropriate new, extended statute of limitations period. The bill expressly indicates that once lawsuits can commence against public entities and public employees beginning on December 1, 2019, these suits, and any suits previously filed that have not yet been finally adjudicated or dismissed, would be subject to the new, extended statute of limitations, and lawsuits could, if otherwise time-barred, be brought during the two-year window.

## **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.

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.

FE to S3739 [1R]

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*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 Murphy Takes Action on Legislation

08/9/2019

**TRENTON** - Today, Governor Phil Murphy signed the following bills into law:

**A312 (Pinkin, Conaway, Giblin, Holley, Danielsen, Mukherji, Wimberly/Vitale, Rice)** - Requires certain health care facilities to provide information concerning palliative care and hospice care services.

**A841 (Land, Calabrese/Andrzejczak)** - Provides for establishment of county college certificate programs to meet needs of certain regional employers.

**A1700 (Dancer, Vainieri Huttie, Calabrese/Cruz-Perez, Cunningham)** - Expands eligibility criteria for designating certain areas as being in need of redevelopment.

**A2004 (Karabinchak, Mazzeo, Pinkin, Coughlin/Diegnan)** - Requires municipality to pay certain nonresidential property tax appeal refunds in equal installments over period of three years.

**A3937 (DeAngelo, Reynolds-Jackson, Verrelli/Turner)** - Allows local government water system employees to reside in all municipalities served by water system.

**A4115 (Benson, DeAngelo, Holley/Greenstein)** - Clarifies that certain students are eligible for NJ STARS and NJ STARS II scholarship upon initial enrollment at institution of higher education on part-time basis.

**A4223 (Johnson, Rooney/Weinberg, Lagana)** - Requires State Treasurer to pay county prosecutor's expenses for overseeing certain law enforcement agencies.

**A4938 (Tucker, Pinkin, Vainieri Huttie/Ruiz, Greenstein)** - Requires DOH to establish "My Life, My Plan" program to support women of childbearing age in developing reproductive life plan.

**A5021 (Quijano, Bramnick, Reynolds-Jackson, Pinkin, Downey/Vitale, Kean)** - Requires Medicaid coverage for group prenatal care services under certain circumstances.

**A5322 (Burzichelli, Milam, Houghtaling, Taliaferro/Sweeney, Oroho, Beach, Andrzejczak)** - Establishes program for cultivation, handling, processing, transport, and sale of hemp; repeals New Jersey Industrial Hemp Pilot Program.

**A5392 (Quijano, Murphy/Vitale, Scutari)** - Establishes new liability standards in sexual abuse lawsuits filed against public entities and public employees.

**A5595 (Milam, Houghtaling, Dancer, Wirths/Oroho, Pennacchio)** - Expands eligibility for EDA small business loan program to specifically include certain farming operations and qualified dairy farmers.

**S601 (Smith, Greenstein/Pinkin, McKeon)** - Establishes "New Jersey Solar Panel Recycling Commission."

**S781 (Sarlo, O'Scanlon/Giblin, DiMaso, Handlin)** - Revises penalties for certain violations of law by public movers and warehousemen.

**S984 (Vitale, Singleton/Conaway, Mukherji, Murphy)** - Establishes certain requirements, including allowable fees, for provision of medical records to patients, legally authorized representatives, and authorized third parties.

**S1109 (Ruiz/Munoz, Quijano)** - Renames "Physician Orders for Life-Sustaining Treatment Act" as "Practitioner Orders for Life-Sustaining Treatment Act"; permits physician assistants to sign and modify POLST forms; requires continuing education concerning end-of-life care.

**S1739 (Oroho, Andrzejczak/Land, Space, Milam)** - Renames county corrections officers as county correctional police officers.

**S2807 (Cryan, Cruz-Perez/Pinkin, Moriarty, Zwicker)** - Concerns service of food or refreshments on mortuary premises.

**S2858 (Gopal, Diegnan/Houghtaling, Downey, Johnson)** - Prohibits issuance of certain badges to NJT board members, PANYNJ commissioners, and local and State elected officials.

**S3212 (Ruiz, Rice/Pintor Marin, Holley)** - Permits municipalities to establish temporary supplemental zoning boards of adjustment to address application backlogs.

**S3334 (Diegnan, Vitale/Conaway, Pinkin)** - Exempts certain surgical technologists from general educational and training requirements.