

2A:61B-1

**LEGISLATIVE HISTORY CHECKLIST**  
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(Sexual abuse-civil action)

**NJSA:** 2A:61B-1

**LAWS OF:** 1992 **CHAPTER:** 109

**BILL NO:** S257

**SPONSOR(S)** Cafiero and O'Connor

**DATE INTRODUCED:** January 28, 1992

**COMMITTEE:** **ASSEMBLY:** Judiciary  
**SENATE:** Judiciary

**AMENDED DURING PASSAGE:** Yes Amendments during passage denoted by asterisks

**DATE OF PASSAGE:** **ASSEMBLY:** August 3, 1992  
**SENATE:** March 23, 1992

**ATE OF APPROVAL:** September 24, 1992

**FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:**

**SPONSOR STATEMENT:** Yes

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes  
**SENATE:** Yes

**FISCAL NOTE:** No

**VETO MESSAGE:** No

**MESSAGE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

**REPORTS:** No

**HEARINGS:** No

KBG:pp

P.L.1992, CHAPTER 109, approved September 24, 1992  
1992 Senate No. 257 (Second Reprint)

1 AN ACT establishing a civil action for sexual abuse and  
2 supplementing Title 2A of the New Jersey Statutes.

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

6 1. a. As used in this act:

7 (1) "Sexual abuse" means an act of sexual contact or sexual  
8 penetration between a child under the age of 18 years and an  
9 adult <sup>1</sup>[who has custody or control over the child or is in a  
10 position of parental authority]<sup>1</sup>. A <sup>1</sup>[person in a position of  
11 parental authority] parent, foster parent, guardian or other  
12 person standing in loco parentis within the household<sup>1</sup> who  
13 <sup>1</sup>knowingly<sup>1</sup> permits or acquiesces in sexual abuse by <sup>1</sup>[the other  
14 parent or by]<sup>1</sup> any other person also commits sexual abuse<sup>1</sup>,  
15 except that it is an affirmative defense if the parent, foster  
16 parent, guardian or other person standing in loco parentis was  
17 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  
19 to protect the child<sup>1</sup>.

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

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

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

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

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

40 c. Nothing in this act is intended to preclude the court from  
41 finding that the statute of limitations was tolled in a case  
42 because of the plaintiff's mental state, duress by the defendant,

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> Senate SJU committee amendments adopted February 24, 1992.

<sup>2</sup> Assembly AJL committee amendments adopted June 15, 1992.

1 or any other equitable grounds. Such a finding shall be made  
2 after a plenary hearing, conducted ~~out of~~ <sup>in</sup> the presence of  
3 the jury. At the plenary hearing the court shall hear all credible  
4 evidence and the Rules of Evidence shall not apply, except for  
5 Rule 4 or a valid claim of privilege. The court may order an  
6 independent psychiatric evaluation of the plaintiff in order to  
7 assist in the determination as to whether the statute of  
8 limitations was tolled.

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

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

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

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

48 (2) An order under this section may be made only if the court  
49 finds that the victim is 16 years of age or younger and that there  
50 is a substantial likelihood that the victim would suffer severe  
51 emotional or mental distress if required to testify in open court.  
52 The order shall be specific as to whether the victim will testify  
53 outside the presence of spectators, the defendant, the jury, or all  
54 of them and shall be based on specific findings relating to the

1 impact of the presence of each.

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

4 (a) The victim or the victim's attorney, parent or legal  
5 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  
11 the testimony by a separate audio system.

12 (5) If testimony is taken on closed circuit television pursuant  
13 to the provisions of this act, a stenographic recording of that  
14 testimony shall also be required. A typewritten transcript of that  
15 testimony shall be included in the record on appeal. The closed  
16 circuit testimony itself shall not constitute part of the record on  
17 appeal 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,  
24 address and identity of a victim shall be confidential and  
25 unavailable to the public.

26 (3) The information described in this subsection shall remain  
27 confidential and unavailable to the public unless the victim  
28 consents to the disclosure or if the court, after a hearing,  
29 determines that good cause exists for the disclosure. The hearing  
30 shall be held after notice has been made to the victim and to the  
31 defendant and the 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  
35 necessary 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  
39 proceeding involving a victim sixteen years of age or younger be  
40 conducted in 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  
44 greater. Actual damages shall consist of compensatory and  
45 punitive damages and costs of suit, including reasonable  
46 attorney's fees. Compensatory damages may include, but are not  
47 limited to, damages for pain and suffering, medical expenses,  
48 emotional trauma, diminished childhood, diminished enjoyment of  
49 life, costs of counseling, and lost wages.

50 2. This act shall take effect immediately, but shall not apply  
51 to any action which is commenced before the effective date.

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56 Establishes a civil action for sexual abuse.

1 the testimony by a separate audio system.  
2 (5) If testimony is taken on closed circuit television pursuant  
3 to the provisions of this act, a stenographic recording of that  
4 testimony shall also be required. A typewritten transcript of that  
5 testimony shall be included in the record on appeal. The closed  
6 circuit testimony itself shall not constitute part of the record on  
7 appeal except on motion for good cause shown.

8 f. (1) The name, address, and identity of a victim or a  
9 defendant shall not appear on the complaint or any other public  
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11 place initials or a fictitious name shall appear.

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13 complaint or any other public record which states the name,  
14 address and identity of a victim shall be confidential and  
15 unavailable to the public.

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17 confidential and unavailable to the public unless the victim  
18 consents to the disclosure or if the court, after a hearing,  
19 determines that good cause exists for the disclosure. The hearing  
20 shall be held after notice has been made to the victim and to the  
21 defendant and the defendant's counsel.

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23 imposing further restrictions with regard to the disclosure of the  
24 name, address, and identity of the victim when it deems it  
25 necessary to prevent trauma or stigma to the victim.

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

31 h. A plaintiff who prevails in a civil action pursuant to this act  
32 shall be awarded damages in the amount of \$10,000, plus  
33 reasonable attorney's fees, or actual damages, whichever is  
34 greater. Actual damages shall consist of compensatory and  
35 punitive damages and costs of suit, including reasonable  
36 attorney's fees. Compensatory damages may include, but are not  
37 limited to, damages for pain and suffering, medical expenses,  
38 emotional trauma, diminished childhood, diminished enjoyment of  
39 life, costs of counseling, and lost wages.

40 2. This act shall take effect immediately, but shall not apply  
41 to any action which is commenced before the effective date.

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44 SPONSOR'S STATEMENT

45  
46 This bill would establish a statutory civil action for sexual  
47 abuse. Currently, sexual abuse victims may bring suit against  
48 their abusers under legal theories of assault, battery, and  
49 intentional infliction of emotional distress, but a specific  
50 statutory action for sexual abuse does not yet exist.

51 The bill defines sexual abuse as an act of sexual contact or  
52 sexual penetration between a child under the age of 18 and an  
53 adult who has custody or control over the child or is in a position  
54 of parental authority. A person in a position of parental

1 authority who permits or acquiesces in sexual abuse by the other  
2 parent or by any other person also commits sexual abuse.

3 Although a person who commits sexual abuse is also guilty of a  
4 crime, many victims are reluctant to pursue criminal complaints  
5 and offenders are often unpunished.

6 Under current law, an action for personal injury must be  
7 commenced within two years after the accrual of the cause of  
8 action. Because of the unique nature of sexual abuse, which may  
9 only be discovered by an adult victim after years of repression,  
10 the bill provides that a civil suit for sexual abuse shall accrue at  
11 the time of reasonable discovery of the injury and its causal  
12 relationship to the act of sexual abuse. Any such action must be  
13 brought within two years after reasonable discovery.

14 In addition, the bill provides that a court would be able to find  
15 that the statute of limitations in a particular case was suspended  
16 ("tolled") because of the plaintiff's insanity, duress by the  
17 defendant, or any other equitable grounds. The judge would  
18 conduct a hearing, and would be able to order an independent  
19 psychiatric evaluation of the victim, in order to make this  
20 determination.

21 The bill also contains a provision similar to that of the "Rape  
22 Shield Law" (N.J.S.A.2C:14-7) that evidence of the victim's  
23 previous sexual conduct is normally not admissible, except under  
24 certain restricted circumstances.

25 The bill also provides that the judge may order that the  
26 testimony of a victim who is 16 or younger may be taken on  
27 closed circuit television at the trial, out of the view of the jury,  
28 defendant, or spectators; that portions of the trial may be closed  
29 to the public, upon court order, if the trial involves a victim age  
30 16 or younger, and that a victim or defendant's name, address,  
31 and identity will not appear on a complaint or any other public  
32 record, unless the victim consents, or unless the court orders the  
33 disclosure following a hearing.

34 A plaintiff who prevails in a civil action pursuant to the bill  
35 would be awarded damages in the amount of \$10,000, plus  
36 reasonable attorney's fees, or actual damages, whichever is  
37 greater. Actual damages would consist of compensatory and  
38 punitive damages and costs of suit, including reasonable  
39 attorney's fees. Compensatory damages may include, but are not  
40 limited to, damages for pain and suffering, medical expenses,  
41 emotional trauma, diminished childhood, diminished enjoyment of  
42 life, costs of counseling, and lost wages.

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Establishes a civil action for sexual abuse.

**SENATE JUDICIARY COMMITTEE**

**STATEMENT TO**

**SENATE, No. 257**

**with Senate committee amendments**

**STATE OF NEW JERSEY**

**DATED: FEBRUARY 24, 1992**

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 257.

This bill would establish a statutory civil action for sexual abuse. Currently, sexual abuse victims may bring suit against their abusers under legal theories of assault, battery, and intentional infliction of emotional distress, but a specific statutory action for sexual abuse does not yet exist.

The bill defines sexual abuse as an act of sexual contact or sexual penetration between an adult and a child under the age of 18. A person in a position of parental authority who permits or acquiesces in sexual abuse by the other parent or by any other person also commits sexual abuse.

Under current law, an action for personal injury must be commenced within two years after the accrual of the cause of action. Because of the unique nature of sexual abuse, which may only be discovered by an adult victim after years of repression, the bill provides that a civil suit for sexual abuse shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action must be brought within two years after reasonable discovery.

In addition, the bill provides that a court would be able to find that the statute of limitations in a particular case was suspended ("tolled") because of the plaintiff's insanity, duress by the defendant, or any other equitable grounds. The judge would conduct a hearing, and would be able to order an independent psychiatric evaluation of the victim, in order to make this determination.

The bill also contains a provision similar to that of the "Rape Shield Law" (N.J.S.A.2C:14-7) that evidence of the victim's previous sexual conduct is normally not admissible except under certain restricted circumstances.

The bill also provides that the judge may order that the testimony of a victim who is 16 or younger may be taken on closed circuit television at the trial, out of the view of the jury, defendant, or spectators; that portions of the trial may be closed to the public, upon court order, if the trial involves a victim age 16 or younger, and that a victim or defendant's name, address, and identity will not appear on a complaint or any other public record, unless the victim consents, or unless the court orders the disclosure following a hearing.

A plaintiff who prevails in a civil action pursuant to the bill would be awarded damages in the amount of \$10,000, plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages would consist of compensatory and

punitive damages and costs of suit, including reasonable attorney's fees. Compensatory damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.

The amendments adopted by the committee would broaden the definition "sexual abuse" as used in the bill. The bill had defined "sexual abuse" as an act of sexual penetration or contact between a child and a person who has custody or control over the child or is in position of parental authority. The amendments would delete the language limiting the bill's provisions to those adults with custody or in a position of parental authority. This means that under the bill an action could be maintained against any adult who sexually abused a child.

The amendments also clarify that a parent, foster parent, guardian or other person standing in loco parentis who knowingly permits any other person to commit sexual abuse on a child may also be liable for sexual abuse. The amendments include language providing that it is an affirmative defense in an action for sexual abuse that the parent or person in loco parentis permitting the sexual abuse by another was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

In addition, the amendments clarify that a plenary hearing shall be held in the presence of the jury when the issue of "tolling" of the statute of limitations is raised in a case alleging sexual abuse.



SENATE SJU COMMITTEE

AMENDMENTS

to

SENATE, No. 257  
(Sponsored by Senator Cafiero)

ADOPTED  
FEB 24 1992

REPLACE SECTION 1 TO READ:

1. a. As used in this act:

(1) "Sexual abuse" means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult<sup>1</sup>[ who has custody or control over the child or is in a position of parental authority]<sup>1</sup>. A <sup>1</sup>[person in a position of parental authority] parent, foster parent, guardian or other person standing in loco parentis within the household<sup>1</sup> who <sup>1</sup>knowingly<sup>1</sup> permits or acquiesces in sexual abuse by <sup>1</sup>[the other parent or by]<sup>1</sup> any other person also commits sexual abuse<sup>1</sup>, except that it is an affirmative defense if the parent, foster parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child<sup>1</sup>.

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

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

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

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

b. In any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be brought within two years after reasonable discovery.

c. Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing, conducted <sup>1</sup>[out of] in<sup>1</sup> the presence of the jury. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 4 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. A plaintiff who prevails in a civil action pursuant to this act shall be awarded damages in the amount of \$10,000, plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages shall consist of compensatory and punitive damages and costs of suit, including reasonable attorney's fees. Compensatory

**damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.**

**ASSEMBLY JUDICIARY, LAW AND  
PUBLIC SAFETY COMMITTEE**

**STATEMENT TO**

**[FIRST REPRINT]**

**SENATE, No. 257**

**with Assembly committee amendments**

**STATE OF NEW JERSEY**

**DATED: JUNE 15, 1992**

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 257 (1R).

This bill would establish a statutory civil action for sexual abuse. Currently, sexual abuse victims may bring suit against their abusers under legal theories of assault, battery, and intentional infliction of emotional distress, but a specific statutory action for sexual abuse does not yet exist.

Prior to amendment in the Senate committee, the bill defined sexual abuse as an act of sexual contact or sexual penetration between an adult and a child under the age of 18. A person in a position of parental authority who permitted or acquiesced in sexual abuse by the other parent or by any other person also committed sexual abuse. The amendments adopted by that committee broadened the definition of "sexual abuse" as used in the bill. These committee amendments delete the phrase "degrading or humiliating the victim or" in paragraph (2) of subsection a, which is the definition of "sexual contact" in response to a concern that the discipline of a child by spanking could be construed to fall within the definition. The amendments deleted the language limiting the bill's provisions to those adults with custody or in a position of parental authority. Under the bill an action could be maintained against any adult who sexually abused a child.

The Senate amendments also clarified that a parent, foster parent, guardian or other person standing in loco parentis who knowingly permits any other person to commit sexual abuse on a child may also be liable for sexual abuse. It is an affirmative defense in an action for sexual abuse that the parent or person in loco parentis permitting the sexual abuse by another was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

Under current law, an action for personal injury must be commenced within two years after the accrual of the cause of action. Because of the unique nature of sexual abuse, which may be discovered by an adult victim only after years of repression, the bill provides that a civil suit for sexual abuse shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action must be brought within two years after reasonable discovery. In addition, a plenary hearing shall be held in the presence of the jury when the issue of "tolling" of the statute of limitations is raised in a case alleging sexual abuse.