

ASSEMBLY, No. 386

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblyman EDWARD H. THOMSON
District 30 (Monmouth and Ocean)

SYNOPSIS

Eliminates statute of limitations in civil cases involving certain sexual offenses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the statute of limitations in certain civil cases
2 and amending N.J.S.2A:14-2, P.L.1992, c.7 and P.L.1992, c.109.

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 action at law for an injury to the person
9 caused by the wrongful act, neglect or default of any person within
10 this State shall be commenced within two years next after the cause
11 of any such action shall have accrued; except that an action by or on
12 behalf of a minor that has accrued for medical malpractice for
13 injuries sustained at birth shall be commenced prior to the minor's
14 13th birthday; and except that any action brought pursuant to
15 N.J.S.2C:14-2, N.J.S.2C:14-3, subsection a. of N.J.S.2C:24-4 for
16 endangering the welfare of a child by engaging in sexual conduct
17 which would impair or debauch the morals of the child, or
18 paragraph (4) of subsection b. of N.J.S.2C:24-4 may be commenced
19 at any time.

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

29

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

32 6. Every action brought pursuant to this act **【shall】** may be
33 commenced **【within two years after the child reaches the age of**
34 **majority】** at any time.

35 (cf: P.L.1992, c.7, s.6)

36

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

39 1. a. As used in this act:

40 (1) "Sexual abuse" means an act of sexual contact or sexual
41 penetration between a child under the age of 18 years and an adult.
42 A parent, resource family parent, guardian or other person standing
43 in loco parentis within the household who knowingly permits or
44 acquiesces in sexual abuse by any other person also commits sexual
45 abuse, except that it is an affirmative defense if the parent, resource

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 family parent, guardian or other person standing in loco parentis
2 was subjected to, or placed in, reasonable fear of physical or sexual
3 abuse by the other person so as to undermine the person's ability to
4 protect the child.

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

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

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

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

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

24 c. [Nothing in this act is intended to preclude the court from
25 finding that the statute of limitations was tolled in a case because of
26 the plaintiff's mental state, duress by the defendant, or any other
27 equitable grounds. Such a finding shall be made after a plenary
28 hearing. At the plenary hearing the court shall hear all credible
29 evidence and the Rules of Evidence shall not apply, except for Rule
30 403 or a valid claim of privilege. The court may order an
31 independent psychiatric evaluation of the plaintiff in order to assist
32 in the determination as to whether the statute of limitations was
33 tolled.] Deleted by amendment, P.L. , c. (C.) (now pending
34 before the Legislature as this bill).

35 d. (1) Evidence of the victim's previous sexual conduct shall
36 not be admitted nor reference made to it in the presence of a jury
37 except as provided in this subsection. When the defendant seeks to
38 admit such evidence for any purpose, the defendant must apply for
39 an order of the court before the trial or preliminary hearing, except
40 that the court may allow the motion to be made during trial if the
41 court determines that the evidence is newly discovered and could
42 not have been obtained earlier through the exercise of due diligence.
43 After the application is made, the court shall conduct a hearing in
44 camera to determine the admissibility of the evidence. If the court
45 finds that evidence offered by the defendant regarding the sexual
46 conduct of the victim is relevant and that the probative value of the
47 evidence offered is not outweighed by its collateral nature or by the
48 probability that its admission will create undue prejudice, confusion

1 of the issues, or unwarranted invasion of the privacy of the victim,
2 the court shall enter an order setting forth with specificity what
3 evidence may be introduced and the nature of the questions which
4 shall be permitted, and the reasons why the court finds that such
5 evidence satisfies the standards contained in this section. The
6 defendant may then offer evidence under the order of the court.

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

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

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

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

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

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

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

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

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

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

47 f. (1) The name, address, and identity of a victim or a
48 defendant shall not appear on the complaint or any other public

1 record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their
2 place initials or a fictitious name shall appear.

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

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

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

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

22 h. A plaintiff who prevails in a civil action pursuant to this act
23 shall be awarded damages in the amount of \$10,000, plus
24 reasonable attorney's fees, or actual damages, whichever is greater.
25 Actual damages shall consist of compensatory and punitive
26 damages and costs of suit, including reasonable attorney's fees.
27 Compensatory damages may include, but are not limited to,
28 damages for pain and suffering, medical expenses, emotional
29 trauma, diminished childhood, diminished enjoyment of life, costs
30 of counseling, and lost wages.

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

32

33 4. This act shall take effect immediately.

34

35

36

STATEMENT

37

38 This bill would eliminate the statute of limitations for any civil
39 action brought against an individual in cases of sexual assault,
40 criminal sexual contact, sexual abuse and in certain instances of
41 sexual offenses which endanger the welfare of a child. The bill
42 would also eliminate the statute of limitations for any civil action
43 filed against an individual or entity which produces, distributes or
44 otherwise engages in the child pornography industry.

45 Current law provides for a two-year statute of limitations in most
46 civil actions for an injury to a person caused by another person
47 within this State. The two-year limit also applies to any civil action
48 filed against an entity for violations of the child pornography law.

1 An exception to this law is any civil action for injury or illness
2 based on the sexual abuse of a victim who is under 18 at the time of
3 the sexual offense. In these cases, the cause of action may be
4 brought within two years after reasonable discovery of the injury
5 and its causal relationship to the act of sexual abuse.

6 This bill would also eliminate the provision empowering the
7 court to decide whether the statute of limitations was delayed in a
8 sexual abuse case because of the victim's mental state, duress by the
9 accused or any other equitable grounds. This section is no longer
10 necessary since the bill would provide an unlimited time period
11 within which to file a civil suit in sexual abuse cases.