

BILL TEXT:

STATE OF NEW YORK

4088--A

2005-2006 Regular Sessions

IN ASSEMBLY

February 8, 2005

Introduced by M. of A. PRETLOW, LATIMER, PHEFFER, TITUS, EDDINGTON, ENGLEBRIGHT -- Multi-Sponsored by -- M. of A. BENEDETTO, BOYLAND, CASALE, CHRISTENSEN, COLTON, CROUCH, CYMBROWITZ, L. DIAZ, R. DIAZ, ERRIGO, ESPAILLAT, FIELDS, GORDON, GREEN, GUNTHER, HEASTIE, JOHN, KOON, LAVINE, LUPARDO, McDONOUGH, MILLER, N. RIVERA, P. RIVERA, ROBINSON, STEPHENS, TOWNS, TOWNSEND, WRIGHT -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the penal law, the social services law, and the civil practice law and rules, in relation to enacting the Child Sexual Abuse Reform Act of 2006; providing for the elimination and extending of certain statutes of limitations related to sexual offenses against children, the expansion of reporting requirements in cases of such offenses, and the expansion of the central child abuse and maltreatment register; to repeal certain provisions of the social services law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "Child
2 Sexual Abuse Reform Act of 2006".
3 § 2. Paragraph (f) of subdivision 3 of section 30.10 of the criminal
4 procedure law, as added by chapter 122 of the laws of 1996, is amended
5 to read as follows:
6 (f) [~~For purposes of a~~] **A** prosecution involving a sexual offense as
7 defined in article one hundred thirty of the penal law committed against
8 a child less than eighteen years of age, incest as defined in section
9 255.25 of the penal law committed against a child less than eighteen
10 years of age, or use of a child in a sexual performance as defined in

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

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1 section 263.05 of the penal law, [~~the period of limitation shall not~~
2 ~~begin to run until the child has reached the age of eighteen or the~~
3 ~~offense is reported to a law enforcement agency or statewide central~~
4 ~~register of child abuse and maltreatment, whichever occurs earlier~~] or
5 conspiracy to commit any of the foregoing offenses under article one
6 hundred five of the penal law, may be commenced within thirty years of
7 the victim attaining the age of eighteen.

8 § 3. Subdivision 3 of section 30.10 of the criminal procedure law is
9 amended by adding a new paragraph (h) to read as follows:

10 (h) A prosecution for the offense of hindering prosecution in the
11 third degree as defined in section 205.55 of the penal law, hindering
12 prosecution in the second degree as defined in section 205.60 of the
13 penal law, and hindering prosecution in the first degree as defined in
14 section 205.65 of the penal law, where such offense involves a sexual
15 offense as defined in article one hundred thirty of the penal law which
16 is committed against a child less than eighteen years of age, incest as
17 defined in section 255.25 of the penal law which is committed against a
18 child less than eighteen years of age, or use of a child in a sexual
19 performance as defined in section 263.05 of the penal law, may be
20 commenced within thirty years.

21 § 4. Paragraph (a) of subdivision 4 of section 30.10 of the criminal
22 procedure law is amended to read as follows:

23 (a) Any period following the commission of the offense during which
24 (i) the defendant was continuously outside this state or (ii) the where-
25 abouts of the defendant were continuously unknown and continuously unas-
26 certainable by the exercise of reasonable diligence. However, in no
27 event shall the period of limitation be extended by more than [~~five~~]
28 thirty years beyond the period otherwise applicable under subdivision
29 two.

30 § 5. Subdivision 7 of section 10.00 of the penal law, as amended by
31 chapter 791 of the laws of 1967, is amended to read as follows:

32 7. "Person" means a human being, and where appropriate, a public or
33 private corporation, an unincorporated association, a partnership, a
34 nonprofit corporation, a government or a governmental instrumentality.

35 § 6. Section 20.00 of the penal law is amended to read as follows:

36 § 20.00 Criminal liability for conduct of another.

37 When one person engages in conduct which constitutes an offense,
38 another person is criminally liable for such conduct when, acting with
39 the mental culpability required for the commission thereof, he or she
40 solicits, requests, commands, importunes, or intentionally aids such
41 person to engage in such conduct or, for an offense listed in article
42 one hundred thirty of this chapter which is committed against a child
43 less than eighteen years of age, after the commission of the offense he
44 or she conceals or hinders the discovery of the offense or evidence of
45 the offense.

46 § 7. Paragraph (h) of subdivision 3 of section 130.05 of the penal
47 law, as amended by chapter 264 of the laws of 2003, is amended to read
48 as follows:

49 (h) a client or patient and the actor is a health care provider [~~or~~],
50 mental health care provider or anyone representing himself or herself as
51 a member of the clergy who provides health care or mental health care
52 services charged with rape in the third degree as defined in section
53 130.25, criminal sexual act in the third degree as defined in section
54 130.40, aggravated sexual abuse in the fourth degree as defined in
55 section 130.65-a, or sexual abuse in the third degree as defined in

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1 section 130.55, and the act of sexual conduct occurs during a treatment
2 session, consultation, interview, or examination.

3 § 8. The penal law is amended by adding a new section 260.09 to read
4 as follows:

5 § 260.09 Endangering the welfare of a child in the first degree.

6 A person is guilty of endangering the welfare of a child in the first
7 degree when he or she commits conduct which is injurious to the phys-
8 ical, mental or moral welfare of a child less than seventeen years of
9 age and violates any section of article one hundred thirty of this chap-
10 ter or section 263.05 of this title.

11 Endangering the welfare of a child in the first degree is a class E
12 felony.

13 § 9. The section heading, the opening paragraph and the closing para-
14 graph of section 260.10 of the penal law are amended to read as follows:

15 Endangering the welfare of a child in the second degree.

16 A person is guilty of endangering the welfare of a child in the second
17 degree when:

18 Endangering the welfare of a child in the second degree is a class A
19 misdemeanor.

20 § 10. Paragraph c of subdivision 5 of section 120.40 of the penal law,
21 as added by chapter 635 of the laws of 1999, is amended to read as
22 follows:

23 c. assault in the third degree, as defined in section 120.00; menacing
24 in the first degree, as defined in section 120.13; menacing in the
25 second degree, as defined in section 120.14; coercion in the first
26 degree, as defined in section 135.65; coercion in the second degree, as
27 defined in section 135.60; aggravated harassment in the second degree,
28 as defined in section 240.30; harassment in the first degree, as defined
29 in section 240.25; menacing in the third degree, as defined in section
30 120.15; criminal mischief in the third degree, as defined in section
31 145.05; criminal mischief in the second degree, as defined in section
32 145.10; criminal mischief in the first degree, as defined in section
33 145.12; criminal tampering in the first degree, as defined in section
34 145.20; arson in the fourth degree, as defined in section 150.05; arson
35 in the third degree, as defined in section 150.10; criminal contempt in
36 the first degree, as defined in section 215.51; endangering the welfare
37 of a child in the second degree, as defined in section 260.10; endanger-
38 ing the welfare of a child in the first degree, as defined in section
39 260.09; or

40 § 11. The opening paragraph of section 260.15 of the penal law, as
41 amended by chapter 156 of the laws of 2000, is amended to read as
42 follows:

43 In any prosecution for endangering the welfare of a child in the first
44 or second degree, pursuant to section 260.09 or 260.10:

45 § 12. The penal law is amended by adding a new section 130.95 to read
46 as follows:

47 § 130.95 Penalties for failure to report.

48 1. Any person required by section four hundred thirteen of the social
49 services law to report a case of suspected child abuse who knowingly and
50 willfully fails to do so shall be civilly liable for the damages prox-
51 imately caused by such failure and shall be guilty of a class A misdemea-
52 nor.

53 2. Any person who is required, pursuant to section four hundred thir-
54 teen of the social services law, to report suspected child abuse and who
55 knowingly and willfully fails to make such a report on more than one
56 occasion shall be guilty of a class E felony.

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1 3. If any person is convicted of violating this section on two or more
2 occasions, the district attorney of the county where such person works
3 or resides shall be allowed to make an application to the court for the
4 appointment of a monitor from the department of corrections to ensure
5 the compliance of such person with the mandatory reporting requirements
6 of section four hundred thirteen of the social services law.

7 § 13. Subdivision 1 of section 413 of the social services law is
8 REPEALED and a new subdivision 1 is added to read as follows:

9 1. (a) The following persons and officials are required to report or
10 cause a report to be made in accordance with this title when they have
11 reasonable cause to suspect that a child coming before them in their
12 professional or official capacity is an abused or maltreated child, when
13 they have reasonable cause to suspect a person coming before them in
14 their professional or official capacity was abused or maltreated when he
15 or she was a child, or when they have reasonable cause to suspect that a
16 child is an abused or maltreated child where any person comes before
17 them in their professional or official capacity and states from personal
18 knowledge facts, conditions or circumstances which, if correct, would
19 render the child an abused or maltreated child: any physician; regis-
20 tered physician assistant; surgeon; medical examiner; coroner; dentist;
21 dental hygienist; osteopath; optometrist; chiropractor; podiatrist;
22 resident; intern; psychologist; registered nurse; social worker; emer-
23 gency medical technician; licensed creative arts therapist; licensed
24 marriage and family therapist; licensed mental health counselor;
25 licensed psychoanalyst; hospital personnel engaged in the admission,
26 examination, care or treatment of persons; member of the clergy or any
27 person employed at a religious institution; a Christian Science practi-
28 tioner; school official; social services worker; day care center worker;
29 provider of family or group family day care; employee or volunteer in a
30 residential care facility defined in subdivision seven of section four
31 hundred twelve of this title or any other child care or foster care
32 worker; mental health professional; substance abuse counselor; alcohol-
33 ism counselor; peace officer; police officer; district attorney or
34 assistant district attorney; investigator employed in the office of a
35 district attorney; or other law enforcement official. Whenever such
36 person is required to report under this title in his or her capacity as
37 a member of the staff of a medical or other public or private institu-
38 tion, school, facility or agency, he or she shall immediately notify the
39 person in charge of such institution, school, facility or agency, or his
40 or her designated agent, who then also shall become responsible to
41 report or cause reports to be made. However, nothing in this section or
42 title is intended to require more than one report from any such institu-
43 tion, school or agency. At the time of the making of a report, or at any
44 time thereafter, such person or official may exercise the right to
45 request, pursuant to paragraph (A) of subdivision four of section four
46 hundred twenty-two of this title, the findings of an investigation made
47 pursuant to this title or section 45.07 of the mental hygiene law.

48 (b) Unless the person confessing or confiding waives the privilege, a
49 member of the clergy, or other minister of any religion or duly accred-
50 ited Christian Science practitioner, shall not be required to make a
51 report as required by paragraph (a) of this subdivision if the
52 confession or confidence was made to him or her in his or her profes-
53 sional character as spiritual advisor.

54 (c) For the purposes of this subdivision the term "member of the cler-
55 gy" shall have the same definition as the term "clergyman" as set forth
56 in section two of the religious corporations law and shall also include

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1 any person responsible for supervising a member of the clergy of a reli-
2 gious institution or responsible for the administration of a religious
3 institution.

4 (d) For the purposes of this subdivision the term "religious institu-
5 tion" shall mean a religious corporation created to enable its members
6 to meet for divine worship or other religious observances or a congrega-
7 tion, society, or other assemblage of persons who are accustomed to
8 meeting for divine worship or other religious observances, without
9 having been incorporated for that purpose, as provided in section two of
10 the religious corporations law.

11 § 14. Paragraph (c) of subdivision 2 of section 422 of the social
12 services law, as added by chapter 717 of the laws of 1986, is amended to
13 read as follows:

14 (c) Whenever a telephone call to the statewide central register
15 described in this section is received by the [~~department~~] office of
16 children and family services, and [~~the department~~] such office finds
17 that the person allegedly responsible for abuse or maltreatment of a
18 child cannot be a subject of a report as defined in subdivision four of
19 section four hundred twelve of this [~~chapter~~] title, but believes that
20 the alleged acts or circumstances against a child described in the tele-
21 phone call may constitute a crime or an immediate threat to the child's
22 health or safety, [~~the department~~] such office shall: (1) convey by the
23 most expedient means available the information contained in such tele-
24 phone call to the appropriate law enforcement agency, district attorney
25 or other public official empowered to provide necessary aid or assist-
26 ance and, (2) include such individuals in the statewide central register
27 in accordance with the requirements of subdivision three of this
28 section, and make such information accessible pursuant to section four
29 hundred twenty-four-a of this title. The commissioner of the office of
30 children and family services shall promulgate any additional rules and
31 regulations he or she deems necessary in furtherance of this paragraph.

32 § 15. Section 208 of the civil practice law and rules, as amended by
33 chapter 485 of the laws of 1986, is amended to read as follows:

34 § 208. Infancy, insanity. If a person entitled to commence an action
35 is under a disability because of infancy or insanity at the time the
36 cause of action accrues, and the time otherwise limited for commencing
37 the action is three years or more and expires no later than three years
38 after the disability ceases, or the person under the disability dies,
39 the time within which the action must be commenced shall be extended to
40 three years after the disability ceases or the person under the disabili-
41 ty dies, whichever event first occurs unless such action is for sexual
42 assault upon a child under any section of article one hundred thirty of
43 the penal law, then such action may be commenced up to six years after
44 the disability ceases or the person under the disability dies, whichever
45 event first occurs; if the time otherwise limited is less than three
46 years, the time shall be extended by the period of disability. The time
47 within which the action must be commenced shall not be extended by this
48 provision beyond ten years after the cause of action accrues, except, in
49 any action other than for medical, dental or podiatric malpractice,
50 where the person was under a disability due to infancy. This section
51 shall not apply to an action to recover a penalty or forfeiture, or
52 against a sheriff or other officer for an escape.

53 § 16. The civil practice law and rules is amended by adding a new
54 section 213-c to read as follows:

55 § 213-c. Actions for sexual assault or abuse of an infant. Notwith-
56 standing any provision of law to the contrary, any cause of action of

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1 physical or psychological injury sustained by a person under eighteen
 2 years of age as a result of a sexual assault or abuse, which is barred
 3 because the statute of limitations has expired, is revived, and an
 4 action thereon may be commenced within two years of the effective date
 5 of this section. For the purposes of this section, sexual assault or
 6 abuse shall be a sex offense as defined under article one hundred thirty
 7 of the penal law or a predecessor statute at the time of the assault or
 8 abuse. Any such cause of action previously dismissed because of the
 9 statute of limitations may be brought under this section notwithstanding
 10 such dismissal. The provisions of this section shall be applicable to
 11 any civil action governed by the statute of limitations of another
 12 jurisdiction. Any cause of action for damages arising under this section
 13 shall not include, as part of the resolution, a confidentiality clause
 14 or agreement as a matter of public policy.

15 § 17. This act shall take effect on the sixtieth day after it shall
 16 have become a law; provided, however, that section 213-c of the civil
 17 practice law and rules, as added by section sixteen of this act, shall
 18 expire and be deemed repealed three years after the effective date of
 19 this act.

SPONSORS MEMO:

**NEW YORK STATE ASSEMBLY
 MEMORANDUM IN SUPPORT OF LEGISLATION
 submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A4088A**SPONSOR:** Pretlow**TITLE OF BILL:**

An act to amend the criminal procedure law, the penal law, the social services law, and the civil practice law and rules, in relation to enacting the Child Sexual Abuse Reform Act of 2006; providing for the elimination and extending of certain statutes of limitations related to sexual offenses against children, the expansion of reporting requirements in cases of such offenses, and the expansion of the central child abuse and maltreatment register; to repeal certain provisions of the social services law relating thereto; and providing for the repeal of certain provisions upon expiration thereof

PURPOSE:

Enacts the Child Sexual Abuse Reform Act of 2006; provides for a thirty year extension of certain statutes of limitations relating to certain child sexual assault offenses

SUMMARY OF PROVISIONS:

Section 2 Extends the statute of limitations for prosecuting sexual offenses committed against a child less than eighteen years of age for thirty years.

Section 3 Extends the statute of limitations for the offense of hindering the prosecution of a sexual offense against a child less than eighteen years of age for thirty years.

Section 4 Extends from five to thirty years the period of commencement of a criminal action when the defendant has been outside the state or

the defendant's whereabouts are unknown.

Section 5 Adds nonprofit corporations (including religious corporations) to the definition of a person.

Section 6 Provides for criminal liability for the conduct of another after the commission of the offense when a person conceals or hinders the discovery or evidence of a child sexual assault offense.

Section 7 Stipulates that a person is incapable of providing consent for sexual acts, when such person receives treatment from a health care or mental health services provider and such provider represents him or herself as a member of the clergy.

Section 8 Adds a new penalty of endangering the welfare of a child in the first degree defined as a class E felony.

Section 9 Adds a new penalty of endangering the welfare of a child in the second degree defined as a class A misdemeanor.

Section 10 Adds endangering the welfare of a child in the first degree and second degree to the list of specified predicate crimes.

Section 11 Adds to the list of potential defenses in a criminal prosecution endangering the welfare of a child in the first or second degree.

Section 12 Establishes penalties for mandated reporters' failure to report cases of suspected child abuse.

Section 13 Adds and defines members of the clergy to the list of mandated reporters in the social services law, with an exception for the act of confession or counsel as a spiritual advisor.

Section 14 Requires individuals other than a parent or guardian who are the subject of a report to the statewide central registry to be included in the database of suspected offenders.

Section 15 Extends from three to six years the time period in which an action for a child sexual assault offense may be commenced by an individual who was disabled as a result of infancy or insanity at the time of the cause of action.

Section 16 Allows for a period of two years, a cause of action to be commenced in cases of child sexual assault or abuse, when such cause of action was previously barred due to the expiration of the statute of limitations.

EXISTING LAW:

* Allows statutes of limitations for both prosecuting sexual offenses committed against a child less than eighteen years of age and the offense of hindering the prosecution of a sexual offense against a child less than eighteen years of age;

* Requires cases of action to be brought within five years;

* Excludes religious corporations or nonprofit institutions in the definition of a person;

* Does not provide for any criminal liability after the commission of a crime when evidence of a crime has been hindered or concealed;

* Does not stipulate that patients of clergy members who provide health or mental health care cannot provide consent for sexual acts;

* Provides only for one penalty of endangering the welfare of a child;

* Does not include endangering the welfare of a child in the first or second degree to the list of specified predicate crimes;

* Does not include: penalties for mandated reporters failure to report; members of the clergy in the list of mandated reporters; or individuals other than parents or guardians to be included in the database of suspected offenders; and,

* Prohibits causes of action to be commenced in cases of child sexual assault or abuse if the statute of limitations has expired.

JUSTIFICATION:

Sexual assault is a crime that is devastating and life altering. The emotional confusion and aftermath experienced by a victim of a sexual assault can manifest a number of obstacles delaying or possibly eliminating the process of healing. When the victims of sexual assault are children the process of healing becomes their childhood. When a crime of this magnitude is committed against a child, someone who can not defend or fight for themselves we must fight for them. If we allow the perpetrators of child sexual abuse to continue to prey on the children of New York State, we are not only failing the children, but condoning the actions of these pedophiles. Due to the high number of unreported cases and the effect on the victim's quality of life, it has become very apparent that the current laws of New York State pertaining to child sexual abuse are glaringly inadequate and unable to address the many legal and ethical issues that exist.

The typical child sexual offender molests an average of 117 children, most of whom do not report the offense. Failure to report occurs often for a variety of different reasons. For example children who are sexually abused do not always recognize that they are being victimized. Those who recognize what has happened fear that disclosure will bring consequences even worse than being victimized again. Most children who are victims of sexual abuse know their abuser; this violation of trust develops into an inability to trust leading to another unreported crime. Also the post traumatic stress that occurs from being repeatedly abused in childhood can result in disassociation, preventing memories from being integrated into consciousness and resulting in total denial of the abuse. This coping mechanism may lead to an altered sense of self and extend into adulthood. Many victims suffer from long term psychological disturbances and in extreme cases may develop a multiple personality disorder. Once the disassociation or post traumatic stress disorder develops treatment becomes very difficult and the victims resistant. Many times only as an adult can the survivors of child sexual assault recognize having been abused, confront their abuser and take action.

This legislation and its language is based on the recommendations from the Suffolk County Supreme Court Special Grand Jury's investigation into the Diocese of Rockville Center. What became painfully evident through the course of the Grand Jury investigation and report is that New York State statute needs significant modifications to address the many issues pertaining to child sexual assault. This legislation will punish those who perpetrate this crime as well as those who would hinder its prosecution and provide a forum whereby survivors of these horrific crimes truly realize that the law is on their side by giving them an opportunity for justice and closure.

LEGISLATIVE HISTORY:

S4207B of 2003-04 died in Codes Committee
S3088 of 2005 died in Codes Committee

FISCAL IMPLICATIONS:

State fiscal implications to be determined.

LOCAL FISCAL IMPLICATIONS:

Local District Attorneys' offices could see an increase in the number of cases being prosecuted due to the expiration of the statute of limitations, the new penalties added by legislation, and the three year period whereby causes of action can be commenced in cases of child sexual assault or abuse when such causes of action were previously barred due to the expiration of the statute of limitations.

EFFECTIVE DATE:

Sixty days after it becomes law. Section 16 of this act shall expire and be deemed repealed three years after the effective date.
