

BILL TEXT:

STATE OF NEW YORK

8416--A

2005-2006 Regular Sessions

IN ASSEMBLY

May 23, 2005

Introduced by M. of A. LENTOL, EDDINGTON, LUPARDO, CUSICK, LAVELLE, KARBEN, REILLY -- Multi-Sponsored by -- M. of A. ALFANO, AUBERTINE, AUBRY, DELMONTE, FIELDS, GREEN, KOON, LATIMER, LAVINE, RAMOS, WEINSTEIN, ZEBROWSKI -- read once and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to the commencement of prosecutions for certain sex offense crimes and the civil practice law and rules, in relation to the commencement of civil actions to recover damages for injuries caused as a result of sexual abuse

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

1 Section 1. Subdivision 2 of section 30.10 of the criminal procedure
2 law is amended by adding a new paragraph (b-1) to read as follows:
3 (b-1) Notwithstanding the period of limitation which is otherwise
4 applicable pursuant to this section, in the case of a prosecution for a
5 class B felony defined in section 130.35, 130.50, 130.70 or 130.75 of
6 the penal law in which the period of limitation under this section has
7 expired, the period of limitation pursuant to paragraph (b) of this
8 subdivision shall recommence at such time as deoxyribonucleic acid (DNA)
9 evidence directly connects a defendant to the commission of the crime,
10 provided that:
11 (i) during the period of limitation otherwise applicable pursuant to
12 this section, a report is made to a law enforcement agency, alleging
13 facts indicating that such a crime has occurred;
14 (ii) at the time of the expiration of the period of limitation other-
15 wise applicable pursuant to this section, the identity of the defendant
16 is unknown; and

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

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1 (iii) such deoxyribonucleic acid (DNA) evidence is legally sufficient
 2 to establish the identity of the defendant with respect to the offense
 3 charged;

4 § 2. The civil practice law and rules is amended by adding a new
 5 section 215-a to read as follows:

6 § 215-a. An action for sexual assault. 1. A claim or cause of action
 7 for physical or psychological injury sustained by a person as a result
 8 of a sexual assault may be commenced within five years of the date on
 9 which it is determined that deoxyribonucleic acid (DNA) evidence direct-
 10 ly connects the defendant to the commission of such sexual assault and
 11 where:

12 (a) at the time of the expiration of the period of limitation other-
 13 wise applicable pursuant to this article, the identity of the defendant
 14 is unknown; and

15 (b) such deoxyribonucleic acid (DNA) evidence is legally sufficient to
 16 establish the identity of the defendant with respect to the sexual
 17 assault alleged.

18 2. Notwithstanding any provision of law to the contrary, any claim or
 19 cause of action for physical or psychological injury sustained by a
 20 person as a result of a sexual assault, which is barred because the
 21 period of limitation has expired, is hereby revived, and may be
 22 commenced when the requirements of subdivision one of this section are
 23 met.

24 3. As used in this section, "sexual assault" means any act that is
 25 prohibited by section 130.35, 130.50, 130.70 or 130.75 of the penal law,
 26 or a predecessor statute of such section.

27 § 3. This act shall take effect immediately.

SPONSORS MEMO:

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

BILL NUMBER: A8416A

SPONSOR: Lentol (MS)

TITLE OF BILL: An act to amend the criminal procedure law, in relation to the commencement of prosecutions for certain sex offense crimes and the civil practice law and rules, in relation to the commencement of civil actions to recover damages for injuries caused as a result of sexual abuse

PURPOSE:

To eliminate the statutes of limitation in certain criminal and civil cases in which DNA evidence connects the defendant to the commission of a sexual assault.

SUMMARY OF PROVISIONS:

Section one eliminates the statute of limitation for all class "B" felony sex crimes defined in Article 130 of the Penal Law (rape, criminal sexual act, aggravated sexual abuse and course of sexual conduct against a child) when DNA evidence directly connects the defendant to the crime. Criminal prosecution could be brought within five years of the date of a

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DNA match, no matter how long after a crime a match was made, if the crime had been previously reported to law enforcement, the identity of the defendant was unknown when the otherwise-applicable statute of limitations expired, and such DNA evidence was legally sufficient to establish the identity of the defendant.

Section two similarly allows victims of sexual assault to bring civil lawsuits against the perpetrators of these acts at any time, when DNA directly connects the defendant to these acts and the factors specified above are shown. Section two of the bill also reopens the civil statute of limitation to allow persons victimized by sexual assault years ago, under these same circumstances, to sue the perpetrators in civil court.

JUSTIFICATION:

DNA provides strong, objective evidence that withstands the test of time. In view of advancements in the use of DNA evidence, it is now possible to identify persons who commit heinous crimes, sometimes many years after they occur.

Given the heinous nature of sexual assault and the integrity of DNA evidence, it is appropriate to eliminate the statutes of limitation for such civil and criminal cases involving DNA evidence.

A number of other states have acted in similar fashion to eliminate the statute of limitations in sexual assault cases where DNA evidence exists. This bill would allow this powerful evidence to be used to convict sexual assault defendants no matter how much time had passed since the commission of a crime.

LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: None.

EFFECTIVE DATE: This act would take effect immediately.
