

BILL TEXT:

STATE OF NEW YORK

8705

2005-2006 Regular Sessions

IN ASSEMBLY

June 6, 2005

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Markey, McEneny, Lentol, Sweeney, Pheffer, DelMonte, Reilly, Eddington, Koon, Gunther, Aubertine, Aubry, Brennan, Canestrari, Carrozza, Destito, Fields, Galef, Glick, John, Lifton, Lupardo, Magnarelli, Mayersohn, Pretlow, Ramos, Weinstein) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the timeliness of prosecutions for certain sex offenses; and to amend the civil practice law and rules, in relation to the timeliness for commencing certain civil actions related to sex offenses

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

1 Section 1. Paragraph (f) of subdivision 3 of section 30.10 of the
2 criminal procedure law, as added by chapter 122 of the laws of 1996, is
3 amended to read as follows:

4 (f) For purposes of a prosecution involving a sexual offense as
5 defined in article one hundred thirty of the penal law committed against
6 a child less than eighteen years of age, incest as defined in section
7 255.25 of the penal law committed against a child less than eighteen
8 years of age, or use of a child in a sexual performance as defined in
9 section 263.05 of the penal law, the period of limitation shall not
10 begin to run until the child has reached the age of [~~eighteen~~] twenty-
11 three or the offense is reported to a law enforcement agency or state-
12 wide central register of child abuse and maltreatment, whichever occurs
13 earlier.

14 § 2. The opening paragraph of section 208 of the civil practice law
15 and rules is designated subdivision (a) and a new subdivision (b) is
16 added to read as follows:

17 (b) Notwithstanding the provisions of subdivision (a) of this section,
18 with respect to all civil claims or causes of action brought by any
19 person for physical, psychological or other injury or condition suffered

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

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1 as a result of conduct which would constitute a sexual offense as
2 defined in article one hundred thirty of the penal law committed against
3 a child less than eighteen years of age, incest as defined in section
4 255.25 of the penal law committed against a child less than eighteen
5 years of age, or the use of a child in a sexual performance as defined
6 in section 263.05 of the penal law, or a predecessor statute that
7 prohibited such conduct at the time of the act, which conduct was
8 committed against a child less than eighteen years of age, the time
9 within which the action must be commenced shall be extended to five
10 years after the person reaches the age of twenty-three years.

11 § 3. Notwithstanding any provision of law which imposes a period of
12 limitation to the contrary, every civil claim or cause of action brought
13 by a person for physical, psychological, or other injury or condition
14 suffered as a result of conduct which would constitute a sexual offense
15 as defined in article 130 of the penal law committed against a child
16 less than eighteen years of age, incest as defined in section 255.25 of
17 the penal law committed against a child less than eighteen years of age,
18 or the use of a child in a sexual performance as defined in section
19 263.05 of the penal law, or a predecessor statute that prohibited such
20 conduct at the time of the act, which conduct was committed against a
21 child less than eighteen years of age, which is barred as of the effec-
22 tive date of this act because the applicable period of limitation has
23 expired is hereby revived, and action thereon may be commenced provided
24 that such action is commenced within one year of the effective date of
25 this section.

26 § 4. The provisions of this act shall be severable, and if any clause,
27 sentence, paragraph, subdivision or part of this act shall be adjudged
28 by any court of competent jurisdiction to be invalid, such judgment
29 shall not affect, impair, or invalidate the remainder thereof, but shall
30 be confined in its operation to the clause, sentence, paragraph, subdi-
31 vision or part thereof directly involved in the controversy in which
32 such judgment shall have been rendered.

33 § 5. This act shall take effect immediately, provided that section
34 three of this act shall take effect on the sixtieth day after this act
35 shall have become a law.

SPONSORS MEMO:

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

BILL NUMBER: A8705

SPONSOR: Rules (Markey)

TITLE OF BILL: An act to amend the criminal procedure law, in relation to the timeliness of prosecutions for certain sex offenses; and to amend the civil practice law and rules, in relation to the timeliness for commencing certain civil actions related to sex offenses

PURPOSE OR GENERAL IDEA OF BILL:

The bill amends the Criminal Procedure Law and the Civil Practice Law and Rules to extend the statute of limitations for criminal and civil actions for sex offenses under article one hundred thirty of the Penal Law committed against a childless than eighteen years of age, for incest against a child less then eighteen years of age or the use of a

child in a sexual performance.

SUMMARY OF SPECIFIC PROVISIONS:

Section one of the bill amends the Criminal Procedure Law to increase the criminal statute of limitation for the prosecution of certain sex offenses committed against a child under the age of eighteen, for incest against a child less than eighteen years of age or the use of a child in a sexual performance. The period of limitation would not begin to run until the child reaches the age of 23 years or the offense is reported to a law enforcement agency or the statewide central register of child abuse and maltreatment.

Section two of the bill would extend the civil statute of limitation for causes of action to remedy injuries or conditions suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law. Such action would have to be commenced within five years after the child reaches the age of 23 years. Under current law, the criminal statute of limitations in child sexual abuse cases in which a victim does not report the crime to law enforcement is not applied until the victim reaches age 18. This bill would add five years to the statute, so that the five-or 10-year statute of limitations in such cases would not begin to run until the victim turned age 23 (extending the time for prosecution until a child victim reached age 28 or 33).

Section three of the bill would revive expired civil causes of action based on conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law. Persons for whom the right to bring a civil action has been foreclosed because of the current civil statute of limitations bar would be given a one-year "window period" from the date of enactment of the bill, regardless of their age, in which to bring an action to recover damages for any past instance of child sexual abuse.

Section four of the bill is a savings clause.

Section five of the bill is the effective date. The bill would take effect immediately but section three which revives expired claims would take effect 60 days after becoming law.

JUSTIFICATION:

Sex crimes, particularly those committed against children, are among the most heinous and deeply disturbing in our society. They are crimes that leave life-long scars, multiple victims and require an all encompassing strategy to combat. This proposal would extend the authority to prosecute and to bring a civil lawsuit for damages in child sexual abuse cases in three significant ways, regardless of whether or not DNA evidence is available.

This bill will provide a remedy for those whose lives have been unalterably changed by the horror of childhood sexual abuse. Victims of these horrific crimes will get their day in court and be able to seek the justice they have been denied.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

None.

EFFECTIVE DATE:

Immediately.
