

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 641
Judiciary

(Delegate C. Wilson, *et al.*)

Civil Actions - Child Sexual Abuse - Statute of Limitations and Limitation of Damages

This bill (1) extends the statute of limitations for an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor; (2) requires a plaintiff in these actions to file a certificate of merit under specified circumstances; (3) revives causes of action barred as of January 1, 2018, solely by the current statute of limitations for a specified time period; and (4) establishes a cap on damages that may be awarded in a revived cause of action.

The bill generally takes effect October 1, 2017. However, certain provisions terminate on January 31, 2019, and others take effect when those provisions terminate.

Fiscal Summary

State Effect: The bill does not materially affect State finances.

Local Effect: Local expenditures increase minimally, in the near term, due to additional claims brought as a result of the revival of the specified causes of action. Local expenditures may also increase significantly but not until well into the future (1) if the bill results in increased payment of claims and insurance premiums for local boards of education and (2) depending on the cumulative value of claims or payments in cases against local boards of education awarded as a result of the bill. The bill is not expected to materially affect circuit court caseloads. Revenues are not affected.

Small Business Effect: Potential meaningful impact on small business law firms that are able to litigate claims as a result of the bill.

Analysis

Bill Summary:

Statute of Limitations and Certificates of Merit: From October 1, 2017, through January 31, 2019, the bill extends the statute of limitations for a civil action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor from 7 years after the victim attains the age of majority to (1) 32 years after the victim attains the age of majority or (2) regardless of age, if, on or before December 31, 2018, the victim files a certificate of merit meeting specified requirements. An attorney for a victim may file an action for damages without filing a certificate of merit if (1) the victim is unable to obtain the certificate of merit before the end of December 31, 2018, and makes a written request to the court for an extension of up to 30 days and (2) the court finds good cause and grants the extension of up to 30 days to obtain the certificate of merit. If the attorney does not file the certificate of merit with the court within the extension period granted by the court, the court must dismiss the action.

A certificate of merit must include:

- a statement by the victim's attorney that the attorney has (1) reviewed the facts of the alleged incident or incidents of sexual abuse; (2) consulted with a psychiatrist or psychologist licensed to practice in the State who is familiar with the relevant facts and issues involved with the alleged incident or incidents of sexual abuse and who will not be a party to the action; and (3) concluded as a result of the review and consultation that there is a reasonable and meritorious cause for the filing of the action; and
- a statement by a licensed psychiatrist or psychologist selected by the victim that the psychiatrist or psychologist (1) is licensed to practice and practices in the State; (2) is not treating and has not treated the victim; (3) has interviewed the victim; and (4) has concluded as a result of the interview that there is a reasonable basis to believe that the victim had been subject to sexual abuse when the victim was a minor.

Statute of Limitations (as of February 1, 2019): Effective February 1, 2019, the bill extends the statute of limitations for a civil action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor from 7 years after the victim attains the age of majority to 32 years after the victim attains the age of majority.

Revival of Time-barred Causes of Action and Caps on Damages: The bill revives claims for damages arising out of alleged child sexual abuse barred solely because of the statute of limitations under § 5-117(b) of the Courts and Judicial Proceedings Article in effect

before the bill's October 1, 2017 effective date and authorizes these actions to be commenced from January 1, 2018, through December 31, 2018. An award for damages in a revived cause of action may not exceed \$1,000,000 in addition to medical expenses and reasonable attorney's fees. In a jury trial, the jury may not be informed of this limitation on damages. If the jury awards damages in excess of the \$1,000,000 limit, including noneconomic or punitive damages, the court must reduce the amount of damages to conform to the limit.

Current Law: Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident(s) of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority. The law is not to be construed to apply retroactively to revive any action that was barred by application of the period of limitations applicable before October 1, 2003.

The statute of limitations for a civil action requires that a civil action must be filed within three years from the date it accrues unless another statutory provision permits a different period of time within which an action can be commenced. The "discovery rule" is applicable generally in all actions, and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong. *Poffenberger v. Risser*, 290 Md. 631 (1981).

If a cause of action accrues to a minor, the general three-year statute of limitations is tolled until the child reaches the age of majority. Thus, on becoming an adult at age 18, a child victim of a tort other than one involving sexual abuse is required to file the suit before the victim reaches age 21.

Section 5-701 of the Family Law Article: Section 5-701 of the Family Law Article defines "sexual abuse" as any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member. "Sexual abuse" includes (1) allowing or encouraging a child to engage in prostitution or specified activities involving obscene or pornographic photography; (2) human trafficking; (3) incest; (4) rape; (5) sexual offense in any degree; (6) sodomy; and (7) unnatural or perverted sexual practices.

Background: In response to growing recognition of the long-term impact of child sexual abuse, approximately 45 states and the District of Columbia have enacted laws that specifically address the statute of limitations for actions to recover damages stemming from this type of abuse. The approaches vary by state, with the simplest and most direct approach extending the limitations period for a civil action based on child sexual abuse for a specified number of years.

A number of state statutes contain a general “discovery” rule that allows any civil claim to proceed within a specific number of years after the injury was or should have been discovered, even if the discovery occurs beyond the expiration of the period of limitations. Other states have a specific discovery rule that tolls the statute of limitations until the abused individual discovers or should have discovered that sexual abuse occurred and that the sexual abuse caused the individual’s injuries.

For example, Delaware allows a cause of action based upon the sexual abuse of a minor to be filed at any time if the cause of action is based upon sexual acts that would constitute a criminal offense under the Delaware Code. This statute of limitations applies to actions against perpetrators and actions for gross negligence by an employer of a perpetrator. However, in Arkansas, any civil action based on sexual abuse that occurred when the injured person was a minor (younger than age 18) must be brought by the later of (1) three years from when the person reaches age 21 or (2) three years from the injured person’s discovery of the effect of the injury or condition attributable to the childhood sexual abuse.

Local Expenditures: While the most likely causes of action filed under the bill’s provisions are lawsuits against perpetrators of abuse, local expenditures may increase significantly if the bill results in increased litigation against local school boards or increased insurance premiums and payment of damages in cases against school boards affected by the bill. Such cases are likely to involve a negligence-related claim pertaining to the alleged abuse. The extent to which this occurs cannot be reliably determined at this time, and depends on the number of cases filed under the bill. However, as previously noted, any such increase is not likely to occur until well into the future.

Limits on Liability for County Boards of Education: A county board of education may raise the defense of sovereign immunity to any amount claimed above the limit of its insurance policy or, if self-insured or a member of an insurance pool, above \$400,000. A county board of education may not raise the defense of sovereign immunity to any claim of \$400,000 or less. A county board employee acting within the scope of employment, without malice and gross negligence, is not personally liable for damages resulting from a tortious act or omission for which a limitation of liability is provided for the county board, including damages that exceed the limitation on the county board’s liability. Local boards of education are not covered under the Local Government Tort Claims Act.

Each county board of education must carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense. The State Board of Education must establish standards for these insurance policies, including a minimum liability coverage of not less than \$400,000 for each occurrence. The policies purchased must meet the standards established by the State Board of Education.

A county board complies with this requirement if it (1) is individually self-insured for at least \$400,000 for each occurrence under the rules and regulations adopted by the Insurance Commissioner or (2) pools with other public entities for the purpose of self-insuring property or casualty risks.

Cases filed under the bill's provisions are likely to be filed in the circuit courts. The Judiciary advises that it cannot determine the number of cases that may be filed as a result of the bill. However, given the criteria under the bill for filing a revived claim and current circuit court caseloads, the Department of Legislative Services advises that the bill is not likely to significantly affect circuit court caseloads. According to the Maryland Judiciary's *Annual Statistical Abstract – FY 2015*, 267,261 civil (general) cases were filed in the State's circuit courts during fiscal 2015.

Additional Information

Prior Introductions: HB 1214 of 2015 was referred to the House Rules and Executive Nominations Committee. No further action was taken on the bill. HB 858 of 2008 was referred to the House Judiciary Committee but subsequently withdrawn.

Cross File: None.

Information Source(s): Baltimore City; Montgomery and Talbot counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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