

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 642
Judiciary

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

Judicial Proceedings

Civil Actions - Child Sexual Abuse - Statute of Limitations and Required Findings

This bill (1) expands 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) establishes a statute of repose for specified civil actions relating to child sexual abuse; and (3) exempts causes of action filed under the provisions of the bill from the notice of claim requirement under the Local Government Tort Claims Act (LGTCA) and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under the Maryland Tort Claims Act (MTCA).

The bill may not be construed to apply retroactively to revive any action that was barred by the application of the period of limitations applicable before October 1, 2017. The statute of repose created by the bill must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the application of the period of limitations applicable before October 1, 2017.

Fiscal Summary

State Effect: Minimal increase in special fund expenditures for the State Insurance Trust Fund (SITF) that occur well into the future if the bill results in payments in MTCA cases that would not be allowed to proceed under existing statute. Revenues are not affected.

Local Effect: The bill is not expected to significantly affect local expenditures, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful impact on small business law firms that are allowed to litigate or proceed with cases as a result of the bill.

Analysis

Bill Summary: An action for damages arising out of an alleged incident or incidents of sexual abuse, as defined in § 5-701 of the Family Law Article, that occurred while the victim was a minor must be filed (1) at any time before the victim reaches the age of majority or (2) within the later of 20 years after the date on which the victim reaches the age of majority or 3 years after the date that the defendant is convicted of a crime relating to the alleged incident or incidents under § 3-602 of the Criminal Law Article (sexual abuse of a minor) or the laws of another state or the United States that would be a crime under § 3-602 of the Criminal Law Article.

However, in an action brought more than seven years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if (1) the person or governmental entity owed a duty of care to the victim; (2) the person or governmental entity employed or exercised some degree of responsibility or control over the alleged perpetrator; and (3) there is a finding of gross negligence on the part of the person or governmental entity. The bill defines “alleged perpetrator” as the individual alleged to have committed the specific incident or incidents of sexual abuse that serve as the basis of an action arising from alleged sexual abuse under § 5-117 of the Courts and Judicial Proceedings Article.

The bill establishes a “statute of repose” prohibiting a person from filing an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority.

The bill exempts causes of action filed under the provisions of the bill from the notice of claim requirement under LGTCA and the submission of a written claim requirement, denial of claim requirement, and the statute of limitations under MTCA.

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.

Section 3-602 of the Criminal Law Article: Section 3-602 of the Criminal Law Article prohibits (1) a parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor from causing sexual abuse to the minor and (2) a household member or family member from causing sexual abuse to a minor. Violators are guilty of a felony, punishable by imprisonment for up to 25 years. A sentence imposed for this offense may be separate from and consecutive to or concurrent with a sentence for any crime based on the act establishing the violation of § 3-602 or a violation of § 3-601 of the Criminal Law Article (child abuse) involving an act of abuse separate from sexual abuse under § 3-602.

Section 3-602 defines “sexual abuse” as an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. “Sexual abuse” includes incest, rape, sexual offense in any degree, sodomy, and unnatural or perverted sexual practices.

Maryland Tort Claims Act and Local Government Tort Claims Act: In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by State personnel performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. Under MTCA, the State essentially “...waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” *Lee v. Cline*, 384 Md. 245, 262 (2004). However, the State remains immune from liability for punitive damages.

MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable.

MTCA also contains specific notice and procedural requirements. A claimant is prohibited from instituting an action under MTCA unless (1) the claimant submits a written claim to the State Treasurer or the Treasurer's designee within one year after the injury to person or property that is the basis of the claim; (2) the State Treasurer/designee denies the claim finally; and (3) the action is filed within three years after the cause of action arises.

However, pursuant to Chapter 132 of 2015, a court, upon motion of a claimant who failed to submit a written claim to the State Treasurer or the Treasurer's designee within the one-year time period under MTCA, and for good cause shown, may entertain the claimant's action unless the State can affirmatively show that its defense has been prejudiced by the claimant's failure to submit the claim.

Pursuant to Chapter 623 of 2016, the submission of a written claim and denial of claim requirements do not apply if, within one year after the injury to person or property that is the basis of the claim, the State has actual or constructive notice of (1) the claimant's injury or (2) the defect or circumstances giving rise to the claimant's injury.

LGTCa is the local government counterpart to MTCA. LGTCa limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts). It further establishes that the local government is liable for tortious acts or omissions of its employees acting within the scope of employment, so long as the employee did not act with actual malice. A local government is not liable for punitive damages. Thus, LGTCa prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees.

LGTCa also specifies that an action for unliquidated damages may not be brought unless notice of the claim is given within one year after the injury. The notice must be in writing and must state the time, place, and cause of the injury. Unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown, the court may entertain the suit even though the required notice was not given. Chapter 624 of 2016 provides an exception to the notice requirements for claimants against local governments under specified circumstances. Chapter 624 establishes that the requirement to submit a written claim within one year after the injury does not apply if, within one year after the injury to person or property that is the basis of the claim, the defendant local government has actual or constructive notice of (1) the claimant's injury or (2) the defect or circumstances giving rise to the claimant's injury.

Limits on Liability for County Boards of Education: County boards of education are not covered under LGTCA. However, 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.

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.

Gross Negligence: Gross negligence involves “an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them. Stated conversely, a wrongdoer is [liable] of gross negligence or acts wantonly and willfully only when he inflicts injury intentionally or is so utterly indifferent to the rights of others that he acts as if such rights did not exist.” *Barbre v. Pope*, 402 Md. 157, 187 (2007) (citations omitted). Gross negligence is a level of neglect more egregious than simple negligence. *Holloway-Johnson v. Beall*, 220 Md. App. 195 (2014). However, “...a fine line exists between allegations of negligence and gross negligence.” *Barbre* at 187. The existence of gross negligence depends on the facts and circumstances of the case. *Rodriguez v. State*, 218 Md. App. 573 (2014).

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.

State Expenditures: Special fund expenditures increase minimally for litigation costs and SITF payments in cases brought and damages awarded as a result of the bill’s provisions. However, given the prospective application of the bill and the likely length of time between when a civil action involving child sexual abuse arises and when it is filed, such expenditures are not likely to occur until well into the future. According to the Treasurer’s Office, most of the cases involving sexual abuse involve resident-on-resident or inmate-on-inmate behavior, not an authority figure employed by the State. The Treasurer’s Office reports that it did pay a claim in one case in 2010.

The Treasurer’s Office advises that the bill’s impact on SITF expenditures depends on the judicial interpretation of the findings required under the bill in order for damages awarded against a nonperpetrator under specified circumstances. As previously noted, one of the required findings is gross negligence on the part of a person or governmental entity. A State employee is personally liable (and may be sued personally) and is not covered under MTCA if his/her tortious actions were grossly negligent. The Department of Legislative Services (DLS) advises that given the volume of claims and payments in child sexual abuse cases, special fund expenditures increase minimally.

Local Expenditures: The bill is not expected to significantly affect local expenditures.

Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. LGIT’s membership currently includes 17 counties, 144 municipalities, and 19 sponsored entities.

LGIT advises that because the types of causes of action affected by the bill are rarely filed against a local government employee or official, the bill has virtually no impact on local governments, including LGIT members.

As previously mentioned, local boards of education and their employees are not covered under LGTCA. The Maryland Association of Boards of Education (MABE) advises that based on information provided by its insurance program and some school system administrators, MABE does not anticipate significant increased liabilities arising from the bill. Based on this assessment, DLS advises that the bill's fiscal impact on local governments is minimal.

Additional Information

Prior Introductions: None.

Cross File: SB 505 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore City; Harford, Prince George's, and Talbot counties; City of Bowie; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); *Maryland Law Encyclopedia*; Department of Legislative Services

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