Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 263 (Delegate Wilson)
Judiciary

Civil Actions - Child Sexual Abuse - Definition and Statute of Limitations

This bill establishes that an action for damages arising out of an alleged incident or incidents of "sexual abuse," as defined under the bill, that occurred while the victim was a minor may be filed at any time. The bill must be construed to apply retroactively to revive any action that was barred by the statutory period of limitations applicable before October 1, 2021, if the action is filed before October 1, 2023.

The bill also repeals provisions from Chapters 12 and 656 of 2017 establishing that the statute of repose in existing statute 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. The bill's provisions are severable.

Fiscal Summary

State Effect: Potential increase in special fund expenditures in FY 2022 through 2024 and well into the future if the bill results in payments in claims against the State that would not be allowed to proceed under existing statute. Potential increase in general fund expenditures for impacted State agencies, as discussed below. Revenues are not affected.

Local Effect: Potential increase in local expenditures in FY 2022 through 2024 and well into the future if the bill results in payments for claims against local government entities, as discussed below. Revenues are not affected.

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

Analysis

Bill Summary: "Sexual abuse" means any act that involves an adult allowing or encouraging a child to engage in:

- obscene photography, films, poses, or similar activity; pornographic photography, films, poses, or similar activity; or prostitution;
- incest;
- rape;
- sexual offense in any degree; or
- unnatural or perverted sexual practices.

Current Law: Pursuant to Chapters 12 and 656 of 2017, 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 at any time before the victim reaches the age of majority. Alternatively, such an action must be filed 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.

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. "Alleged perpetrator" means 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.

Chapters 12 and 656 also include a "statute of repose," which prohibits 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.

Causes of action filed under the Acts' provisions are exempt from the notice of claim requirement under the Local Government Torts Claim 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).

Chapters 12 and 656 of 2017 may not be construed to apply retroactively to revive any action that was barred by the statutory period of limitations applicable before October 1, 2017. The statute of repose created by the Acts must be construed to apply both prospectively and retroactively to provide repose to defendants regarding actions that were barred by the statutory period of limitations applicable before October 1, 2017.

Statute of Limitations – In General

In general, 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 (1) 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, a person who exercises authority over the child because of the person's position or occupation, or by any household or family member or (2) sex trafficking of a child by any individual. "Sexual molestation or exploitation" includes (1) allowing or encouraging a child to engage in prostitution or specified activities involving obscene or pornographic photography; (2) incest; (3) rape; (4) sexual offense in any degree; and (5) 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, and unnatural or perverted sexual practices.

State Expenditures: Special fund expenditures for the State Insurance Trust Fund (SITF) may increase in fiscal 2022 through 2024 and well into the future if the bill results in payments in cases against the State from prospective claims that would be barred under existing statute and retroactive claims that are revived if filed between October 1, 2021, and October 1, 2023. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill. The extent of any such increase cannot be reliably estimated at this time. The bill (1) allows an action for damages arising out of child sexual abuse to be filed at any time and (2) repeals provisions under existing statute limiting causes of action against a person or governmental entity that is not the alleged perpetrator.

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.

Agencies pay premiums to SITF that are comprised of an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. The Treasurer is charged with setting premiums "so as to produce funds that approximate the payments from the fund." (*See* Md. State Fin. & Proc. Code Ann. § 9-106(b).) The actuary assesses SITF's reserves and each agency's loss experience for the various risk categories, which include tort claims and constitutional claims. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium. That amount is electronically transferred to SITF from the appropriations in an agency's budget.

While an employee who committed child sexual abuse is likely not covered under MTCA, the Treasurer's Office has historically advised that the State may still face liability through other causes of action (*e.g.*, negligent hiring, retention, etc.). In 2019, the Treasurer's Office advised that it has faced a few of these types of cases but has not faced any claims under the 2017 legislation. According to the Treasurer's Office, claims filed pursuant to the bill may be so old that it makes it extremely difficult for the office to conduct a proper

investigation and defense of the claim. Other potential effects include litigation costs and an inability to reserve against future losses.

The Treasurer's Office further advises that its staff is currently working at full capacity and that the volume and complexity of cases expected under the bill require an additional adjuster to investigate claims. The Department of Legislative Services advises that the need for additional personnel depends on actual workload generated by the bill. *For illustrative purposes only,* the costs associated with hiring one adjuster is approximately $59,000 in fiscal 2022 and increases to $76,000 by fiscal 2026.

Local Expenditures: Local expenditures increase if the bill results in payments in cases brought under the bill's provisions, including prospective claims that would be barred under existing statute and retroactive claims that are revived if filed between October 1, 2021, and October 1, 2023. The extent of any such increase cannot be reliably estimated at this time and would occur in fiscal 2022 through 2024 (for revived retroactive claims) and well into the future (for prospective claims currently barred under the statute).

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.

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. While LGIT has historically advised that while these cases can be expensive to defend, the bill is more likely to impact school boards than local governments. According to LGIT (1) the types of causes of action affected by the bill are rarely filed against a local government employee or official and (2) while an employee who committed child sexual abuse is likely not covered under LGTCA, LGIT would still defend the local government in related actions.

While a cause of action under the bill is more likely to be filed against a county board of education than a local government, similar issues apply. 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.

Anne Arundel County Public Schools (AACPS) advises that while the bill increases the school district's exposure to claims for damages, AACPS cannot quantify the bill's fiscal impact at this time.

Additional Information

Prior Introductions: HB 974 of 2020, as amended, passed the House. No further action was taken. HB 687 of 2019, a similar bill, passed the House as amended and received an unfavorable report from the Senate Judicial Proceedings Committee.

Designated Cross File: SB 134 (Senator Hettleman, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland State Treasurer's Office; Anne Arundel County Public Schools; Local Government Insurance Trust; Maryland Association of Counties; Department of Legislative Services

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