

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

## FISCAL AND POLICY NOTE

## Senate Bill 238

(Senator Kelley, *et al.*)

## Judicial Proceedings

## Civil Actions - Child Sexual Abuse - Statute of Limitations

This bill 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 from 7 to 32 years from the date that the victim attains the age of majority.

The bill also contains a two-year retroactive provision. Under the provision, actions that were barred solely because the statute of limitations had expired as of January 1, 2010 may be revived, so long as the cause of action is commenced before January 1, 2012.

The bill takes effect January 1, 2010.

## Fiscal Summary

**State Effect:** Any increase in civil actions arising out of alleged incident(s) of child sexual abuse can be handled with the existing budgeted resources of the Judiciary.

**Local Effect:** Any increase in civil actions arising out of alleged incident(s) of child sexual abuse in circuit courts can be handled with existing local resources.

### **Small Business Effect: None.**

## Analysis

**Current Law:** Pursuant to Chapter 360 of 2003, an action for damages arising out of an alleged incident(s) of sexual abuse 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 would be required to file the suit before the victim reaches age 21.

**Background:** States have taken different approaches to the issue of expanding the ability of child sexual abuse victims to bring civil claims at a time later than that allowed in most other civil cases. The simplest and most direct approach extends the limitations period for a civil action based on child sexual abuse for a specified number of years. Connecticut’s statute appears to be the most expansive, allowing a civil claim for sexual abuse to be brought up to 30 years after becoming an adult.

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.

At least two states, Alaska and Maine, allow civil actions for certain sexual offenses against minors to be commenced at any time. In 2007, Delaware enacted the Child Victim Act, which permits civil cases related to child sexual abuse to be brought at any time. The law also contained a two-year retroactive provision for claims previously barred by the statute of limitations. In 2002, California enacted a one-year window for certain retroactive claims. While the exact number of retroactive claims filed is unknown, according to news reports, approximately 800 to 1,000 claims are said to have been filed under the provision.

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## Additional Information

**Prior Introductions:** Similar bills were introduced during prior sessions. HB 858 of 2008, which was withdrawn, extended the statute of limitations to 32 years and provided a limited extension if a certificate of merit was obtained. HB 1148 of 2007, which was withdrawn, maintained the current statute of limitations, but applied it retroactively during a two-year timeframe to cases previously barred. SB 575 of 2007 extended the statute of limitations if a certificate of merit was obtained. The bill received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), *ABA Journal*, *Ms. Magazine*, National Association to Prevent Sexual Abuse of Children, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510