

NJ Bill Would Open Up Public Entities To Abuse Suits

By **Bill Wichert**

Law360 (May 3, 2019, 8:31 PM EDT) -- People alleging they experienced sexual abuse could be empowered to pull public entities into New Jersey courts in the same way they can go after private organizations if the governor signs a bill that would clear regulatory hurdles limiting such claims against the state, school districts and other governmental bodies.

Among other provisions allowing people to pursue suits that would be otherwise time-barred, the wide-ranging legislation would end the immunity provided to public entities in cases dealing with sexual abuse, including the protections afforded by the state's Tort Claims Act.

The proposed measure gives "victims of child sexual abuse, whether they are abused within a private institution or a public institution or any other situation, an equal platform to prove their cause of action," according to attorney Gregory G. Gianforcaro, who represents plaintiffs in sexual abuse cases.

The state Legislature overwhelmingly approved the bill, S477, in March. Gov. Phil Murphy, who has expressed support for the proposal, is expected to take action on the legislation in the coming weeks.

Under the TCA, to sue a public entity, an individual must file a tort claim notice within 90 days of when the clock starts ticking on the person's cause of action. If they miss that window, the person may be permitted, with a judge's approval, to file a late notice within a year of that starting point. The TCA also bars any suits against public entities following two years after a claim has accrued.

The legislation would eliminate that two-year statute of limitations for sexual abuse suits against public entities and lift the procedural requirements in such cases. The bill would allow for a public entity to be held liable in a sexual abuse suit in the same manner as a private organization.

An accrual date under the TCA could be when a child was sexually abused, when they turn 18 or when they make the connection between the abuse and their damages, but "the problem is so often a victim who was sexually abused as a child takes years if not decades to be able to understand the impact between their abuse and their damages," Gianforcaro said.

When they make that connection, "the last thing that they would think about is contacting a lawyer or filing a lawsuit," because "they are just coming to terms ... with the impact the abuse has had on them," Gianforcaro said.

"The tort claims notices, when it comes to childhood sexual abuse victims, is just so unfair and makes it almost impossible for ... that victim of childhood sexual abuse to be able to sue," he added.

Michael G. Donahue III of Stark & Stark, who has represented plaintiffs in sexual abuse cases,

added that the TCA's notice requirements under such circumstances "create a draconian extinguishment of claims."

"We are talking about children who have suffered sexual assault, and the likelihood or even the possibility of them coming forward 90 days after the offense, or 90 days after their 18th birthday ... is remote," Donahue said.

The bill provides "a fair opportunity" for closure in a situation where a public entity may be involved, he said.

Beyond removing the immunity for public entities, the legislation includes a number of other provisions that would give more people who have experienced sexual abuse their day in court.

For individuals abused after they were 18, the current two-year statute of limitations for filing suits would be increased to seven years of when the person connects his or her injuries to the abuse.

People who were abused before turning 18 would be permitted to file claims at any time before they reach 55. If they sought to bring a case after turning 55, they would have to follow the seven-year statute of limitations.

Those policies would apply to both public and private entities.

The bill, which would go into effect Dec. 1, would also create a two-year window for parties to file cases that would be otherwise time-barred.

The various provisions in the bill are "all tied together to transform the system in New Jersey, which has been predator-supportive and institutional-friendly, into a system that supports and empowers the victims," according to Marci Hamilton, a professor at the University of Pennsylvania and founder and CEO of the nonprofit advocacy group Child USA.

"We know from experience, if you empower the victims, you're going to get more information to the public and you're going to get more healing," said Hamilton, who helped draft the legislation.

Jeffrey P. Fritz of Soloff & Zervanos PC, a plaintiffs' attorney in sexual abuse cases, added that enabling people to come forward due to a change in the civil statute of limitations exposes child abusers and the institutions that have allowed the abuse to occur.

Even if those allegations fall outside the criminal statute of limitations, the exposure may encourage other people — whose claims could lead to criminal charges — to tell their stories, according to Fritz.

"The societal benefit and the policy behind changing the civil statute of limitations goes way beyond money and lawsuits and individual justice, and it ultimately exposes predators and makes kids safe," Fritz said.

While the legislation is expected to generate more sexual abuse lawsuits against public and private institutions in the coming years, the cases may still prove challenging for both sides, according to Angelo A. Stio III of Pepper Hamilton LLP, who has defended entities in such matters.

Stio noted that, given the passage of time in some instances, records and witnesses may no longer be around.

"It is two litigants who develop the facts and they present it to an impartial jury or a judge on a full factual record so that they can make a determination," Stio said. "If there's not witnesses, if there's not documents that are still around, it makes it more difficult."

But Hamilton said defendants often have “a tremendous amount of evidence the plaintiff had no access to.”

“What the lawsuits do is it gives the victims the power to get discovery and to learn how is it possible that they were a second-grader and they were sexually abused when they were in their school with all the other adults around, and it starts to put the pieces of the puzzle together through the records from the defendant that you’ll never get if you don’t have a lawsuit,” Hamilton said.

The difficulties facing both sides in such litigation are “not challenges that should overcome the rights of the victim to seek closure,” added Donahue.

“Nobody should be denied the opportunity ... to properly defend themselves if they were wrongfully accused or wrongfully identified, but likewise, a claim should not be silenced just because of the mere passage of time,” Donahue said.

--Editing by Kelly Duncan and Orlando Lorenzo.