

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 261

PRINTER NO. 243

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

January 30, 2017

PRIME SPONSOR

Senator Scarnati

DESCRIPTION AND PURPOSE OF BILL

Amends Title 42 (Judiciary and Judicial Procedure), in limitation of time, further providing for infancy, insanity or imprisonment, for no limitation applicable and for other offenses. This legislation also provides a civil action regarding childhood sexual assault. This change applies retroactively. Additionally, the legislation removes the statute of limitations for several criminal offenses and adds waivers of commonwealth and local agency sovereign immunity.

Specifically, this legislation does the following:

- Outlines several findings and declarations pertaining to The Remedies Clause found in the Constitution of Pennsylvania, the Pennsylvania Supreme Court interpretation of The Remedies Clause and the intent of the General Assembly to eliminate statutes of limitation only in rare circumstances in which delayed discovery of the cause of action is particularly likely and the right to defend against the claim is not significantly undermined;
- Amends §5533 (b) (2) (i) (Infancy), providing that an individual may bring a civil action arising from childhood sexual abuse up to 32 years after attaining 18 years of age (current law allows for 12 years), except as provided under paragraph (3) as summarized below;
- Adds §5533 (b) (3), that provides that an individual entitled to bring a civil action arising from childhood sexual abuse is under 18 years of age at the time the cause of action accrues, the individual shall have an unlimited period of time to commence and action for damages against the following individuals:
 - 1) The individual who committed the act of childhood sexual abuse.
 - 2) An individual who conspired with the individual who committed the act described above for the purpose of bringing about the abuse.

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- 3) An individual who had knowledge of the childhood sexual abuse and failed to prevent any subsequent abuse by the same perpetrator against the same individual by reporting the abuse to law enforcement officials or to a State or county child protective services agency. No cause of action shall accrue under this subparagraph against any individual who was aware that a report of the childhood sexual abuse had already been made by another individual to a State or county child protective services agency.
- Amends §5551 (No limitation applicable) of Title 42 (Judiciary and Judicial Procedure), by adding subparagraph (7), abolishing the statute of limitations, if the victim was under 18 years of age at the time of the offense, for the following offenses itemized under Title 18 (Crimes and Offenses):
 - 1) §3011(b) (relating to trafficking in individuals).
 - 2) §3012 (relating to involuntary servitude) as it relates to sexual servitude.
 - 3) §3121 (relating to rape);
 - 4) §3122.1 (relating to statutory sexual assault);
 - 5) §3123 (relating to involuntary deviate sexual intercourse);
 - 6) §3124.1 (relating to sexual assault);
 - 7) §3124.2 (relating to institutional sexual assault);
 - 8) §3125 (relating to aggravated indecent assault); and
 - 9) §4302 (relating to incest).
 - Provides that subparagraph (7) mentioned above shall also apply to any conspiracy or solicitation to commit any of the above mentioned offenses under Title 18 (Crimes and Offenses);
 - Adds §3124.2(a) and (a.2) (relating to institutional sexual assault) to the list of "major sexual offenses" itemized under 18 Pa.C.S. §5552 (b.1) that a prosecution must be commenced within 12 years after it is committed, except for when the victim was under 18 years of age at the time of the offense; and
 - Amends §8522 (b) (Exceptions to sovereign immunity) and §8542 (b) (Exceptions to governmental immunity) of Title 42 (Judiciary and Judicial Procedure) to waive sovereign and governmental immunity for conduct which constitutes an offense under new §5551 (7), if the conduct caused injury to the plaintiff and the state or local agency acted with negligence.

This act shall take effect immediately.

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FISCAL IMPACT:

The abolishment of the statute of limitations for criminal prosecutions of human trafficking and certain sexual offenses provided for in this legislation may have a minor fiscal impact on the Commonwealth if District Attorneys pursue additional prosecutions that would have been affected by a statute of limitations and if the prosecution results in a defendant being sentenced to a State Correctional Institution. Additionally, the impact would depend on the number of cases tried in the courts and the number of individuals sentenced to a State Correctional Institution.

The variable per inmate/per day rates for an inmate in a State Correctional Institution is determined by the additional number of inmates be sentenced to a State Correctional Institution. The variable per inmate/per day rates for the State Correctional Institutions are as follows:

- 0 - 299 = \$16.52 per inmate/per day
- 300 - 599 = \$35.27 per inmate/per day
- 600 - 900 = \$68.72 per inmate/per day
- 900+ = \$100.83 per inmate/per day

Additionally, there could be additional costs to the Commonwealth and local governments by exposing them to civil lawsuits concerning child sexual abuse that are currently barred based on sovereign immunity. Again, future costs to the Commonwealth and local governments cannot be estimated at this time because it would depend on the number of civil actions taken that were previously barred due to sovereign immunity or governmental immunity and the damage awards to plaintiffs.

If the provisions of this legislation annually result in the conviction of 10 additional individuals who are sentenced to state confinement, additional costs to the Department of Corrections would be approximately \$60,000 in the first year, increasing to \$935,000 in year 10 when 100 additional individuals would be in state custody. The total cost under this assumed model is estimated at \$4,475,000 over the ten-year period.

| Year | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|--|----|----------|----------|----------|----------|-----------|-----------|-----------|-----------|-----------|-----------|
| Per. Diem -- Small Population Increases | | \$ 16.52 | \$ 17.35 | \$ 18.21 | \$ 19.12 | \$ 20.08 | \$ 21.08 | \$ 22.14 | \$ 23.25 | \$ 24.41 | \$ 25.63 |
| | 1 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| | 2 | | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| | 3 | | | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| | 4 | | | | 10 | 10 | 10 | 10 | 10 | 10 | 10 |
| | 5 | | | | | 10 | 10 | 10 | 10 | 10 | 10 |
| | 6 | | | | | | 10 | 10 | 10 | 10 | 10 |
| | 7 | | | | | | | 10 | 10 | 10 | 10 |
| | 8 | | | | | | | | 10 | 10 | 10 |
| | 9 | | | | | | | | | 10 | 10 |
| | 10 | | | | | | | | | | 10 |
| Total Inmates | | 10 | 20 | 30 | 40 | 50 | 60 | 70 | 80 | 90 | 100 |
| Annual Cost | | 60,298 | 126,626 | 199,436 | 279,210 | 366,463 | 461,743 | 565,636 | 678,763 | 801,788 | 935,420 |
| Cumulative | | 60,298 | 186,924 | 386,359 | 665,569 | 1,032,032 | 1,493,776 | 2,059,411 | 2,738,174 | 3,539,962 | 4,475,382 |