

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1947 Session of 2015

INTRODUCED BY MARSICO, PETRARCA, KORTZ, BRIGGS, MICCARELLI AND DAVIDSON, APRIL 4, 2016

SENATOR RAFFERTY, JUDICIARY, IN SENATE, AS AMENDED, JUNE 28, 2016

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in limitation of time,
3 further providing for infancy, insanity or imprisonment, for
4 no limitation applicable and for other offenses; and, in
5 matters affecting government units, further providing for
6 exceptions to sovereign immunity and for exceptions to
7 governmental immunity.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Section 5533(b)(2)(i) of Title 42 of the~~ <--
11 ~~Pennsylvania Consolidated Statutes is amended to read:~~

12 SECTION 1. THE GENERAL ASSEMBLY FINDS AND DECLARES AS <--
13 FOLLOWS:

14 (1) THE REMEDIES CLAUSE FOUND IN SECTION 11 OF ARTICLE I
15 OF THE CONSTITUTION OF PENNSYLVANIA HAS BEEN INTERPRETED BY
16 THE PENNSYLVANIA SUPREME COURT TO PROVIDE A CONSTITUTIONAL
17 GUARANTEE OF ACCESS TO LEGAL REMEDIES AND DEFENSES.

18 (2) THE PENNSYLVANIA SUPREME COURT HAS INTERPRETED THE
19 REMEDIES CLAUSE AS PROVIDING A VESTED RIGHT TO ACCRUED

1 DEFENSES THAT CANNOT BE INFRINGED UPON BY SUBSEQUENT LAW.

2 (3) PURSUANT TO THE INTERPRETATION BY THE PENNSYLVANIA
3 SUPREME COURT, THE GENERAL ASSEMBLY IS CONSTITUTIONALLY
4 PRECLUDED FROM ADOPTING ANY RETROACTIVE CHANGES EXTENDING A
5 STATUTE OF LIMITATIONS OR INVALIDATING A DEFENSE BASED ON A
6 STATUTE OF LIMITATIONS THAT HAS ALREADY EXPIRED AS AGAINST
7 ANY PARTICULAR DEFENDANT.

8 (4) STATUTES OF LIMITATION RECOGNIZE THAT THE RIGHT TO
9 ASSERT A CAUSE OF ACTION AND THE RIGHT TO ASSERT A DEFENSE TO
10 THAT ACTION ARE ON AN EQUAL FOOTING IN THIS COMMONWEALTH.

11 (5) STATUTES OF LIMITATION PROMOTE DILIGENCE AND REPOSE,
12 DIMINISH UNCERTAINTY AND ALLOW EVERY PERSON TO ALLOCATE
13 RESOURCES APPROPRIATELY.

14 (6) STATUTES OF LIMITATION PROMOTE ACCURATE FACT-FINDING
15 IN LITIGATION, AS EVIDENCE AND TESTIMONY BECOME DEGRADED OR
16 UNAVAILABLE OVER TIME.

17 (7) THEREFORE, IT IS THE INTENT OF THE GENERAL ASSEMBLY
18 TO ELIMINATE STATUTES OF LIMITATION ONLY IN RARE
19 CIRCUMSTANCES IN WHICH DELAYED DISCOVERY OF THE CAUSE OF
20 ACTION IS PARTICULARLY LIKELY AND THE RIGHT TO DEFEND AGAINST
21 THE CLAIM IS NOT SIGNIFICANTLY UNDERMINED.

22 SECTION 2. SECTION 5533(B)(2)(I) OF TITLE 42 OF THE
23 PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED AND THE SECTION IS
24 AMENDED BY ADDING A PARAGRAPH TO READ:

25 § 5533. Infancy, insanity or imprisonment.

26 * * *

27 (b) Infancy.--

28 * * *

29 (2) (i) [If] EXCEPT AS PROVIDED UNDER PARAGRAPH (3), IF <--
30 an individual entitled to bring a civil action arising

1 from childhood sexual abuse is under 18 years of age at
2 the time the cause of action accrues, the individual
3 shall have a period of [12] 32 years after attaining 18
4 years of age in which to commence an action for damages
5 regardless of whether the individual files a criminal
6 complaint regarding the childhood sexual abuse.

7 * * *

8 (3) IF AN INDIVIDUAL ENTITLED TO BRING A CIVIL ACTION <--
9 ARISING FROM CHILDHOOD SEXUAL ABUSE IS UNDER 18 YEARS OF AGE
10 AT THE TIME THE CAUSE OF ACTION ACCRUES, THE INDIVIDUAL SHALL
11 HAVE AN UNLIMITED PERIOD OF TIME TO COMMENCE AN ACTION FOR
12 DAMAGES AGAINST THE FOLLOWING INDIVIDUALS:

13 (I) THE INDIVIDUAL WHO COMMITTED THE ACT OF
14 CHILDHOOD SEXUAL ABUSE.

15 (II) ANY INDIVIDUAL WHO CONSPIRED WITH THE
16 INDIVIDUAL WHO COMMITTED THE ACT OF CHILDHOOD SEXUAL
17 ABUSE FOR THE PURPOSE OF BRINGING ABOUT THE ABUSE.

18 (III) ANY INDIVIDUAL WHO, HAVING ACTUAL KNOWLEDGE OF
19 THE CHILDHOOD SEXUAL ABUSE PERPETRATED AGAINST THE
20 INDIVIDUAL, FAILED TO PREVENT ANY SUBSEQUENT CHILDHOOD
21 SEXUAL ABUSE BY THE SAME PERPETRATOR AGAINST THE SAME
22 INDIVIDUAL BY REPORTING THE ABUSE TO LAW ENFORCEMENT
23 OFFICIALS OR TO A STATE OR COUNTY CHILD PROTECTIVE
24 SERVICES AGENCY DURING THE VICTIM'S MINORITY. NO CAUSE OF
25 ACTION SHALL ACCRUE UNDER THIS SUBPARAGRAPH AGAINST ANY
26 INDIVIDUAL WHO WAS AWARE THAT A REPORT OF THE CHILDHOOD
27 SEXUAL ABUSE HAD ALREADY BEEN MADE BY ANOTHER INDIVIDUAL
28 OR ENTITY TO LAW ENFORCEMENT OFFICIALS OR TO A STATE OR
29 COUNTY CHILD PROTECTIVE SERVICES AGENCY.

30 Section 2 3. Section 5551 of Title 42 is amended by adding a <--

1 paragraph to read:

2 § 5551. No limitation applicable.

3 A prosecution for the following offenses may be commenced at
4 any time:

5 * * *

6 (7) An offense under any of the following provisions of
7 18 Pa.C.S. (relating to crimes and offenses), OR A CONSPIRACY <--
8 OR SOLICITATION TO COMMIT AN OFFENSE UNDER ANY OF THE
9 FOLLOWING PROVISIONS OF 18 PA.C.S. IF THE OFFENSE IS
10 FACILITATED BY THE CONSPIRACY OR SOLICITATION, if the victim
11 was under 18 years of age at the time of the offense:

12 Section 3011(b) (relating to trafficking in individuals).

13 Section 3012 (relating to involuntary servitude) as it
14 relates to sexual servitude.

15 Section 3121 (relating to rape).

16 Section 3122.1 (relating to statutory sexual assault).

17 Section 3123 (relating to involuntary deviate sexual
18 intercourse).

19 Section 3124.1 (relating to sexual assault).

20 Section 3124.2 (relating to institutional sexual
21 assault).

22 Section 3125 (relating to aggravated indecent assault).

23 Section 4302 (relating to incest).

24 Section ~~3~~ 4. Section 5552(b.1) and (c) (3) of Title 42 are <--
25 amended to read:

26 § 5552. Other offenses.

27 * * *

28 (b.1) Major sexual offenses.--[A] Except as provided in
29 section 5551(7) (relating to no limitation applicable), a
30 prosecution for any of the following offenses under Title 18

1 must be commenced within 12 years after it is committed:

2 Section 3121 (relating to rape).

3 Section 3122.1 (relating to statutory sexual assault).

4 Section 3123 (relating to involuntary deviate sexual
5 intercourse).

6 Section 3124.1 (relating to sexual assault).

7 Section 3124.2(a) and (a.2) (relating to institutional
8 sexual assault).

9 Section 3125 (relating to aggravated indecent assault).

10 Section 4302 (relating to incest).

11 Section 6312 (relating to sexual abuse of children).

12 (c) Exceptions.--If the period prescribed in subsection (a),
13 (b) or (b.1) has expired, a prosecution may nevertheless be
14 commenced for:

15 * * *

16 (3) Any sexual offense committed against a minor who is
17 less than 18 years of age any time up to the later of the
18 period of limitation provided by law after the minor has
19 reached 18 years of age or the date the minor reaches 50
20 years of age. As used in this paragraph, the term "sexual
21 offense" means a crime under the following provisions of
22 Title 18 (relating to crimes and offenses):

23 [Section 3011(b) (relating to trafficking in
24 individuals).

25 Section 3012 (relating to involuntary servitude) as
26 it relates to sexual servitude.

27 Section 3121 (relating to rape).

28 Section 3122.1 (relating to statutory sexual
29 assault).

30 Section 3123 (relating to involuntary deviate sexual

1 intercourse).

2 Section 3124.1 (relating to sexual assault).

3 Section 3125 (relating to aggravated indecent
4 assault).]

5 Section 3126 (relating to indecent assault).

6 Section 3127 (relating to indecent exposure).

7 [Section 4302 (relating to incest).]

8 Section 4304 (relating to endangering welfare of
9 children).

10 Section 6301 (relating to corruption of minors).

11 Section 6312(b) (relating to sexual abuse of
12 children).

13 Section 6320 (relating to sexual exploitation of
14 children).

15 * * *

16 Section ~~3.1~~ 5. Sections 8522(b) and 8542(b) of Title 42 are <--
17 amended by adding paragraphs to read:

18 § 8522. Exceptions to sovereign immunity.

19 * * *

20 (b) Acts which may impose liability.--The following acts by
21 a Commonwealth party may result in the imposition of liability
22 on the Commonwealth and the defense of sovereign immunity shall
23 not be raised to claims for damages caused by:

24 * * *

25 (10) Sexual abuse.--Conduct which constitutes an offense
26 enumerated under section 5551(7) (relating to no limitation
27 applicable) if the injuries to the plaintiff were caused by
28 actions or omissions of the Commonwealth which constitute
29 gross negligence. Sovereign immunity may be raised to the <--
30 extent the actions or omissions of the Commonwealth

1 constitute negligence.

2 § 8542. Exceptions to governmental immunity.

3 * * *

4 (b) Acts which may impose liability.--The following acts by
5 a local agency or any of its employees may result in the
6 imposition of liability on a local agency:

7 * * *

8 (9) Sexual abuse.--Conduct which is proscribed by the
9 provisions of Title 18 (relating to crimes and offenses)
10 enumerated in section 5551(7) (relating to no limitation
11 applicable) if the claimant establishes that:

12 (i) the local agency acted in a grossly negligent <--
13 manner; and

14 (ii) the action under subparagraph (i) caused injury
15 to the claimant.

16 * * *

17 Section 4 6. This act shall apply as follows: <--

18 (1) The addition of 42 Pa.C.S. ~~§ 8542(b)(9)~~ §§ 5533(B) <--
19 (3), 8522(B)(10) AND 8542(B)(9) shall apply to causes of
20 action which ~~arise~~ ACCRUE on or after the effective date of <--
21 this paragraph.

22 (2) The amendment or addition of 42 Pa.C.S. §§ ~~5533(b)~~ <--
23 ~~(2)(i)~~, 5533(B)(2)(I) AND (3), 5551(7) and 5552(b.1) and (c) <--
24 (3) shall not be applied to revive an action which has been
25 barred by an existing statute of limitations on the effective
26 date of this section.

27 (3) The amendment of 42 Pa.C.S. § 5533(b)(2)(i) shall be
28 applied retroactively, including to revive an action which
29 was barred by a statute of limitations prior to the effective
30 date of this section.

1 Section 5 7. This act shall take effect ~~in 60 days~~

<--

2 IMMEDIATELY.

<--