

Door Shut on Reviving All Time-Barred Childhood Sexual Abuse Claims, but Many Plaintiffs Can Still Get Into Court Through the Window...

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Litigation Alert

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The recent derailment of Pennsylvania's constitutional amendment to revive all childhood sexual abuse cases may not have quite the impact as was widely reported. The media has generally portrayed this derailment as a setback for those sexually abused during childhood, but time-barred from bringing a lawsuit. However, even without the amendment, the statute of limitations has been relaxed over the years when it comes to childhood sexual abuse claims, both by the courts and the legislature.

Pennsylvania courts have been opening their doors to many such claims for a few years now under tolling theories such as the "discovery rule" or fraudulent concealment. While some childhood sexual abuse cases may be delayed or not revived until the constitutional amendment gets back on track, many plaintiffs with a viable argument that they did not and could not "discover" their damages from childhood sexual abuse within a statute of limitations period or were fraudulently induced into not investigating claims timely, have been and will continue to bring lawsuits. This more generous application of tolling theories was approved of by the Superior Court in *Rice v. Diocese of Altoona-Johnstown*, 212 A.3d 1055, (Pa. Super. 2019), *appeal granted*, 325 WAL 2019 (per curiam). There, the appellate court concluded tolling theories could apply to permit a plaintiff to litigate claims against the Diocese of Altoona-Johnson, even though it was conceded by the plaintiff that the sexual abuse she allegedly experienced occurred in the 1970s and 1980s. The *Rice* decision was directly contrary to earlier precedential decisions of the intermediate appellate court which held similar theories could not be used as a means to revive time-barred claims concerning childhood sexual abuse. It should be noted that the Superior Court's broad view of the tolling theories is under review by the Pennsylvania Supreme Court in *Rice*.

Practitioners, clients and insurers are well advised to consider these recent changes to the statute, and treatment of the tolling theories by the courts, when currently assessing defenses and strategy with respect to older allegations of sexual abuse in the context of such civil litigation in Pennsylvania. This week, as widely reported, an attempt to further open the door to permit time-barred claims based on alleged childhood sexual abuse, via an amendment to the Pennsylvania Constitution, was halted when a procedural misstep by the Department of State was uncovered. Specifically, House Bill 14, which recently passed the Pennsylvania House of Representatives and advanced to Senate for consideration, provided for the following exception to statute of limitations law:

"[a]n individual for whom a statutory limitations period has already expired shall have a period of two years from the time that this subsection becomes effective to commence an action arising from childhood sexual abuse, in such cases as provided by law at the time that this subsection becomes effective." If passed, the amendment would effectively restart the statute of limitations for civil suits relating to childhood sexual abuse for a two-year period – even those previously brought and dismissed on statute grounds alone. The practical effect of the amendment would be that claims well outside the statutory limitations period could be instituted regardless of the real and substantial concerns regarding the ability to defend such claims, and without the plaintiff having to prove to the court any reason for failing to litigate the claim timely.

The amendment process will not proceed for now because the Secretary of State failed to advertise the bill's passage in the House in two newspapers in each county, where possible, as is constitutionally required. For the time-being, this means the current state law outlining the statute of limitations will remain in effect, and the possibility of suspending the statute of limitations and permitting decades-old claims of alleged childhood sexual assault, will not be the subject of a vote in May 2021. Given the other recent changes in the law, the amendment's failure will likely not stop many plaintiffs from arguing their time-barred claims in the courts.

Under current Pennsylvania law, most causes of action have a two-year statute of limitations period for plaintiffs to file a lawsuit. See 42 Pa.C.S. § 5524. For minors, Pennsylvania's Minority Tolling Statute "stops the clock" on their causes of action until the age of 18, generally extending the time period to file a lawsuit to the 20th birthday of the plaintiff. The Minority Tolling Statute, however, provides for different rules with regard to a civil suit arising from sexual abuse upon a minor, and permits a lawsuit to be initiated far beyond the plaintiff's 20th birthday. The term "sexual abuse" includes sexual activity in the nature of sexual intercourse, deviate sexual intercourse and indecent contact. See 42 Pa.C.S. § 5533(b)(2)(ii).

Prior to 2019, the law allowed individuals to bring civil actions "arising from childhood sexual abuse," for 12 years after attaining the age of 18, *i.e.*, age 30. Effective November 26, 2019, Pennsylvania amended its statute of limitations provisions as related to civil actions for claims of sexual abuse of minors. The current Minority Tolling Statute expanded the statute of limitations in two important respects: 1) individuals who were under 18 years of age at the time a cause of action for sexual abuse accrues now have 37 years from the age of 18 to timely file a lawsuit; and 2) individuals between the age of 18 and 24 years of age when the cause of action arising from sexual abuse accrues have until the age of 30 to timely file suit.

In short, a plaintiff who alleges sexual abuse during minority now has until he or she is 55 years old to file a lawsuit based on the alleged abuse, and adults, who formerly would be subject to a two-year statute of limitations, have until the age of 30 if the alleged sexual abuse cause of action accrued between the ages of 18 and 24. Importantly, the changes in the law did not apply to revive claims that would have been time-barred by the prior version of the law as of November 26, 2019. In other words, if the statute of limitations had run under the old version of the Minority Tolling Statute, the plaintiff could not rely on the newly revised legislation to "revive" the claim and render it timely. By way of example, if an individual was 32 years old as of November 26, 2019, the statute of limitations would apply to bar the claim, but if an individual was 29 as of that date, he or she would have until the age of 55 to timely initiate a lawsuit. The same applies to the expanded statute of limitations for persons between 18 and 24 years of age. Nevertheless, artful pleading and arguments by time-barred claimants, may pave the way to the courthouse under a tolling theory, at least sufficient to defeat a motion on the basis some factual determination is needed.

Pennsylvania has long-favored a strong policy of strictly enforcing statute of limitations laws. *Booher v. Olczak*, 797 A.2d 342, 345 (Pa. Super. 2002). That policy is for good reason - allowing civil claims to be brought, regardless of when in the distant past the alleged harm occurs, impairs the ability of the defendant to defend against the claim. Timely initiating and resolving disputes also serves to promote stability and encourage prompt redress for civil wrongs. The derailed constitutional amendment would upend these norms and open the floodgates to practically ancient allegations, resulting in substantial prejudice to defendants. Although the amendment cannot proceed at this time, momentum has built to work around the limitations that have been statutorily authorized, either through attempting the amendment process again, which could take upwards of two years, or through passing new legislation. New legislation would obviate the need for the amendment but would itself likely be the subject of due process constitutional challenges.

In sum, it is important to take note of the recently enacted changes of law, the shift in judicial interpretation of tolling theories, as well as potential changes with respect to childhood sexual abuse claims, including the following points:

- The 2019 change to the Minority Tolling Statute expands the statute of limitations period to: 1) 55 years of age for persons under the age of 18 when the cause of action accrues; and 2) 30 years of age for persons between 18 and 24 years of age when the

cause of action accrues.

- The 2019 change to the Minority Tolling Statute does not revive claims that were untimely at the time the new statute of limitations period took effect.
- Persons who are unquestionably untimely with respect to bringing claims may potentially be successful in pursuing a cause of action if a tolling theory is successfully argued. Conversely, if it is apparent that a plaintiff could have discovered the injury and its cause in time to initiate a lawsuit and no fraud is alleged, the statute of limitations applies.
- The proposed constitutional amendment allowing all time-bared claims of childhood sexual abuse claims will not be enacted this year, but legislators and advocates have signaled their intention to find a means that would allow time-barred claims to go to court.

White and Williams lawyers defend entities in multiple states against claims of sexual abuse and monitor developments in the law in order to counsel clients and insurers. For questions or further information, please contact Robert G. Devine (deviner@whiteandwilliams.com; 856.317.3647), Michael W. Horner (hornerm@whiteandwilliams.com; 856.317.3658), Kimberly M. Collins (collinskm@whiteandwilliams.com; 856.317.3655) or another member of the Litigation group.

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