

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 575

(Senator Brochin)

Judicial Proceedings

Civil Actions - Child Sexual Abuse - Statute of Limitations

This bill extends, for a limited period, 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, if a certificate of merit is obtained.

The bill terminates on December 31, 2009.

Fiscal Summary

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

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

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that an action for damages arising out of alleged incident(s) of sexual abuse that occurred while the victim was a minor may be filed by December 31, 2008, if the victim, regardless of age, has obtained a “certificate of merit.”

A “certificate of merit” must be executed by the victim’s attorney and licensed mental health practitioner selected by the victim. It must include the attorney’s statement that the attorney has (1) reviewed the facts of the case; (2) consulted with a State-licensed

mental health practitioner who is familiar with the relevant facts and issues and is not a party to the action; and (3) concluded that there is a reasonable and meritorious cause for filing the action. The certificate of merit must also include a statement by the licensed mental health practitioner that the practitioner: (1) is licensed to practice and practices in Maryland; (2) is not treating and has not treated the victim; (3) has interviewed the victim and is familiar with the victim's action for damages; and (4) has concluded as a result of the consultation that there is a reasonable basis to believe that the victim was subjected to sexual abuse when the victim was a minor.

If a victim is unable to obtain the certificate of merit by December 31, 2008, upon the written request of the victim's attorney and a finding of good cause by the court, a court may grant an extension of up to 30 days to obtain the certificate of merit.

Any claim for damages arising out of alleged incident(s) of sexual abuse that would otherwise be barred by January 1, 2008 due to the statute of limitations is revived under this bill and may be initiated within one year of January 1, 2008.

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 may not 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 provides that a civil action must be filed within three years from the date it accrues unless another statutory provision provides 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)

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. Rather than specifically extending the statute of limitations for child sexual abuse, New York and Virginia have enacted statutes that suspend the statute of limitations if a criminal prosecution from the same facts has been commenced. The applicable statute of limitations begins to run after the conclusion of the criminal case.

A number of other 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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