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## Child Victims Act Is a Step Toward Healing

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By **Marie Napoli** | March 07, 2019 at 02:00 PM

It is a sad reality in this world that children are not respected and safeguarded as they ought to be. More and more we learn about abuses that happen to children by persons



who were entrusted with their care—pastors, teachers, rabbis, scout leaders. These abusers cause severe physical, psychological, and emotional trauma to their young victims, which can persist for years or even decades.

Sexual assault is a complicated event that is not as easy to discuss as a fall in the schoolyard or a fight with a classmate. Fear of repercussions, an inability to articulate or fully understand the incident, and misplaced feelings of guilt or shame all can stifle a victim into silence. This silence can last for years, even well into adulthood—and should not be mistaken for retroactive consent, a waiver of rights, or an absolution of their abusers.

For too long New York state's restrictive statutes of limitations and notice of claim requirements kept victims from pursuing their valid claims. New York previously had one of the most restrictive statute of limitations with respect to sexual abuse. As a result, countless offenders went unpunished because they were let off the procedural hook based on expiration of the statute of limitations. For example, in the case of *Zumpano*

*v. Quinn*, 6 N.Y.3d 666 (2006), New York’s highest court had to dismiss the claims by plaintiffs alleging numerous abuses by priests over a multi-year period on the grounds of expiration of the statute of limitations. The Court of Appeals clearly felt hand-tied in having to dismiss the case, stating: “In recent years, countless priests have been accused of impermissibly touching and sexually exploiting young people entrusted to their care, resulting in a plethora of claims seeking compensation for the injuries caused by these deplorable acts. *Regrettably, many of these claims are time-barred, and absent relief from the Legislature will remain unredressed.*” *Id.* at 672 (emphasis added). See also *John Doe No. 6 v. Yeshiva and Mesivta Torah Temimah*, 863 N.Y.S.2d 891, 897 (N.Y. Sup. Ct., Kings Cnty. 2008) (dismissing claims for sexual abuse as time-barred, stating: “Undoubtedly, too, there will be cases where real harm will go without redress . . . . Such is the cost of statutes of repose, assessed by the Legislature or to which it is resigned.”). The Legislature has now heeded this call, and has extended the statute of limitations for sexual abuse cases.

Thus, thankfully, on Thursday, Feb. 14, 2019, Governor Cuomo signed the Child Victims Act into law, cutting much of the procedural red tape that for years has kept victims from bringing criminal charges and filing civil lawsuits for damages and harms caused by abuse and assault on minor children.

The Child Victims Act lifts some of the burden on victims through four key changes to existing law. First, the Child Victim’s Act raises statute of limitations for both criminal and civil actions for sexual crimes against minors. Criminal actions benefit from a five-year extension—the time from which the statute begins to run is increased from age 18 to 23. The time to file civil lawsuits is extended to age 55 for incidents that occurred in childhood. This is a monumental and much-needed increase from the previous cut-off age of 23.

Second, the Child Victims Act creates a “look back” period to revive claims where the time to file has expired under the outgoing law. Specifically, this legislation provides

for a one-year window of time, starting six months from the effective date of the law, for past victims of child sexual abuse to initiate lawsuits against their abusers and the institutions that let the abuse take place, when previously their claims were time-barred.

Third, the Act shows that the New York Legislature understands the underlying problem for many abuse cases stems from institutional failures. The Act will extend the civil statute of limitations for *any claims* that arise from injuries and harms caused by sexual offenses committed against minors, from intentional torts to negligent supervision, negligent hiring, and even ordinary negligence.

Lastly, the Act clears away the pre-lawsuit “Notice of claim” requirement for actions against governmental entities—including public schools, police stations, and public hospitals. Typically, in order to sue a municipal or county-owned entity, a potential litigant must file a detailed summary of the claims they wish to bring against that entity, and must do so within 90 days of the incident. The strict Notice of Claim requirement has foreclosed countless claims over the years due to its short time limit. It is a burdensome obstacle for minor victims that many could not overcome. Abolishing the Notice of Claim requirement will help litigants immeasurably—during both the revival window and going forward.

One issue that still remains is the question of the constitutionality of statutes such as the Child Victims Act which revive previously time barred claims. With respect to criminal cases, in the case of *Stogner v. California*, 539 U.S. 607 (1990), the Supreme Court held that retroactive application of new statutes of limitation to revive criminal cases that were previously time-barred violates the Ex Post Facto Clause of the U.S. Constitution. But this Constitutional bar does not apply to civil cases asserting sexual abuse, and the various states have ruled differently on this issue. The New York Court of Appeals has held that the legislature “may constitutionally revive a personal cause of action” if it reasonably determines that “the circumstances are exceptional and are such as to satisfy the court that serious injustice would result to plaintiffs not guilty of any fault if the

intention of the [l]egislature were not effectuated.” *Gallewski v. Hentz & Co.*, 301 N.Y. 164, 174-75 (1950). Such special circumstances have been found to exist, for example, in the case of latent effects of exposure to toxic substances. See, e.g., *Hymowitz v. Eli Lilly & Co.*, 73 N.Y.2d 487 (1989) (upholding legislature’s adoption of discovery rule for “latent effects of exposure to any substance” and simultaneous one-year revival of lapsed actions because operation of “the exposure rule prevented the bringing of timely actions,” and “an injustice has been rectified.”). It remains to be seen whether the Child Victims Act is challenged as violative of the New York State Constitution, but clearly a strong argument that such “special circumstances” are present in the case of sexual abuse.

In sum, New York state has finally recognized the voices of abuse victims and has taken steps toward healing by protecting victims’ right to legal recourse. Several other states have likewise recently enacted similar laws to expand time frames for victims’ lawsuits. Massachusetts now gives victims up to 35 years to sue. Ohio and Pennsylvania both now give victims until age 30. Hopefully soon other states will follow suit.

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