

No. 2019-87

AN ACT

HB 962

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, reforming remedies for victims of sexual abuse:

in limitation of time, further providing for six months limitation, for infancy, insanity or imprisonment, for no limitation applicable and for other offenses;

in matters affecting government units, further providing for exceptions to sovereign immunity, for limitations on damages in actions against Commonwealth parties, for exceptions to governmental immunity and for limitations on damages in actions against local parties;

in sentencing alternatives, providing for counseling services for victims of sexual abuse; and

transferring money from the General Fund into the Crime Victim's Compensation Fund.

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

Section 1. Section 5522 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 5522. Six months limitation.

* * *

(c) Exception.—This section shall not apply to any civil action or proceeding brought under section 8522(b)(10) (relating to exceptions to sovereign immunity) or 8542(b)(9) (relating to exceptions to governmental immunity).

Section 2. Section 5533(b)(2) of Title 42 is amended to read:

§ 5533. Infancy, insanity or imprisonment.

* * *

(b) Infancy.—

* * *

(2) (i) If 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 a period of [12] 37 years after attaining 18 years of age in which to commence an action for damages regardless of whether the individual files a criminal complaint regarding the [childhood] sexual abuse.

(i.1) If an individual entitled to bring a civil action arising from sexual abuse is at least 18 and less than 24 years of age at the time the cause of action occurs, the individual shall have until attaining 30 years of age to commence an action for damages regardless of whether the individual files a criminal complaint regarding the sexual abuse.

(ii) For the purposes of this paragraph, the term ["childhood sexual abuse"] "sexual abuse" shall include, but not be limited to, the following sexual activities between [a minor] *an individual who is 23 years of age or younger* and an adult, provided that the

individual bringing the civil action engaged in such activities as a result of forcible compulsion or by threat of forcible compulsion which would prevent resistance by a person of reasonable resolution:

(A) sexual intercourse, which includes penetration, however slight, of any body part or object into the sex organ of another;

(B) deviate sexual intercourse, which includes sexual intercourse per os or per anus; and

(C) indecent contact, which includes any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire in either person.

(iii) For purposes of this paragraph, "forcible compulsion" shall have the meaning given to it in 18 Pa.C.S. § 3101 (relating to definitions).

Section 3. Section 5551 of Title 42 is amended by adding a paragraph to read:

§ 5551. No limitation applicable.

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

* * *

(7) An offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses), or a conspiracy or solicitation to commit an offense under any of the following provisions of 18 Pa.C.S. if the offense results from the conspiracy or solicitation, if the victim was under 18 years of age at the time of the offense:

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

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

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 4302 (relating to incest).

Section 4. Section 5552(b.1), (c)(3) and (c.1) of Title 42 are amended and subsection (c) is amended by adding a paragraph to read:

§ 5552. Other offenses.

* * *

(b.1) Major sexual offenses.—***[A] Except as provided in section 5551(7) (relating to no limitation applicable), a prosecution for any of the following offenses under Title 18 must be commenced within 12 years after it is committed:***

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

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

* * *

(3) Any sexual offense committed against a minor who is less than 18 years of age any time up to the later of the period of limitation provided by law after the minor has reached 18 years of age or the date the minor reaches [50] 55 years of age. As used in this paragraph, the term "sexual offense" means a crime under the following provisions of Title 18 [(relating to crimes and offenses):

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

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

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).] *or a conspiracy or solicitation to commit an offense under any of the following provisions of Title 18 if the offense results from the conspiracy or solicitation:*

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

[Section 4302 (relating to incest).]

Section 4304 (relating to endangering welfare of children).

Section 6301 (relating to corruption of minors).

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

Section 6320 (relating to sexual exploitation of children).

(3.1) Any sexual offense committed against an individual who is 23 years of age or younger any time up to the later of the period of limitation provided by law after the individual has reached 24 years of age or 20 years after the date of the offense. As used in this paragraph, the term "sexual offense" means a crime under the following provisions of Title 18 or a conspiracy or solicitation to commit an offense under any of the following provisions of Title 18 if the offense results from the conspiracy or solicitation:

Section 3011(a) (relating to trafficking in individuals) as it relates to sexual servitude.

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

Section 3121(a) and (b).

Section 3123(a).

Section 3124.1.

Section 3124.2(a) and (b).

Section 3125(a).

Section 3126.

Section 3127.

Section 4302(a).

* * *

(c.1) Genetic identification evidence.—Notwithstanding any provision of law to the contrary, if evidence of a misdemeanor sexual offense set forth in subsection (c)(3) *or* (3.1) or a felony offense is obtained containing human deoxyribonucleic acid (DNA) which is subsequently used to identify an otherwise unidentified individual as the perpetrator of the offense, the prosecution of the offense may be commenced within the period of limitations provided for the offense or one year after the identity of the individual is determined, whichever is later.

* * *

Section 5. Section 8522(b) of Title 42 is amended by adding a paragraph to read:

§ 8522. Exceptions to sovereign immunity.

* * *

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

* * *

(10) Sexual abuse.—Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the Commonwealth party which constitute negligence.

Section 6. Section 8528(c)(5) of Title 42 is amended and the section is amended by adding a subsection to read:

§ 8528. Limitations on damages.

* * *

(c) Types of damages recoverable.—Damages shall be recoverable only for:

* * *

(5) Property losses, except that property losses shall not be recoverable in claims brought pursuant to section 8522(b)(5) (relating to **[potholes and other dangerous conditions]** *exceptions to sovereign immunity*).

(d) Exclusions.—This section shall not apply to damages awarded under section 8522(b)(10).

Section 7. Section 8542(b) of Title 42 is amended by adding a paragraph to read:

§ 8542. Exceptions to governmental immunity.

* * *

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

* * *

(9) Sexual abuse.—Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable)

if the injuries to the plaintiff were caused by actions or omissions of the local agency which constitute negligence.

* * *

Section 8. Section 8553 of Title 42 is amended by adding a subsection to read:

§ 8553. Limitations on damages.

* * *

(e) Exclusions.—This section shall not apply to damages awarded under section 8542(b)(9) (relating to exceptions to governmental immunity).

Section 8.1. Title 42 is amended by adding a section to read:

§ 9730.3. *Counseling services for victims of sexual abuse.*

(a) Eligibility.—

(1) Subject to subsection (b), the office shall provide, for an individual who is a direct victim of sexual abuse, counseling services related to the sexual abuse. Payment shall be made directly to the health care provider that provides the services from the Crime Victim's Compensation Fund. The office shall determine the form and manner for receiving payment under this paragraph.

(2) Eligibility under paragraph (1) is not affected by an adverse determination under section 704(c) or 707(a) of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

(b) Value of services.—

(1) The total value of services under subsection (a)(1) shall not exceed:

(i) \$5,000 if the individual was, at the time of the sexual abuse, 18 years of age or older; and

(ii) \$10,000 if the individual was, at the time of the sexual abuse, under 18 years of age.

(2) The value of services under subsection (a)(1) shall be reduced by the amount of any of the following payments received or to be received by the individual for counseling subject to subsection (a) as a result of the sexual abuse:

(i) Payment by the individual who committed the sexual abuse.

(ii) Payment under an insurance program or a health and welfare program. This subparagraph includes a program mandated by law.

(iii) Payment under a contract of insurance in which the individual is the beneficiary.

(iv) Payment from public funds.

(v) Payment under a pension program. This subparagraph includes a program providing for disability or survivor's benefits.

(vi) Payment by a party alleged to be responsible in whole or in part for the sexual abuse, without regard to the party's criminal culpability.

(vii) Payment made under the Crime Victims Act.

(c) Cooperation.—

(1) Health care providers and insurers shall respond in writing to a request by the office for information related to this section within 30 days of receipt of the request.

(2) Commonwealth agencies shall cooperate with the office for information related to this section.

(3) A person that fails to respond to a request under paragraph (1) shall be subject to a penalty of not more than \$50 per day, up to and including the date of compliance. The office may enforce this paragraph. The office may utilize revenue under this paragraph to implement this section or to assist local victim service agencies.

(d) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Counseling services." Mental health therapy performed by or under the supervision of a health care provider.

"Direct victim." An individual against whom a crime has been committed or attempted and who as a direct result of the criminal act or attempt suffers physical or mental injury.

"Health care provider." Any of the following:

(1) A psychiatrist.

(2) An individual licensed under the act of March 23, 1972 (P.L.136, No.52), known as the Professional Psychologists Practice Act.

(3) A licensed professional counselor, as defined in section 3 of the act of July 9, 1987 (P.L.220, No.39), known as the Social Workers, Marriage and Family Therapists and Professional Counselors Act.

(4) A licensed social worker, as defined in section 3 of the Social Workers, Marriage and Family Therapists and Professional Counselors Act.

"Office." The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

"Sexual abuse." Conduct which occurs in this Commonwealth and would constitute an offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses):

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

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

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

Section 8.2. The sum of \$5,000,000 is transferred from the General Fund to the Crime Victim's Compensation Fund to be used until June 30, 2021, to implement the addition of 42 Pa.C.S. § 9730.3(a)(1) for counseling services

provided after the effective date of this section. In fiscal years beginning after June 30, 2021, the General Assembly shall appropriate money to implement the addition of 42 Pa.C.S. § 9730.3(a)(1).

Section 9. The provisions of this act are severable. If any provision of this act is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 10. This act shall apply as follows:

(1) The amendment or addition of 42 Pa.C.S. §§ 5533(b)(2), 5551(7) and 5552(b.1) and (c)(3) and (3.1) shall not be applied to revive an action which has been barred by an existing statute of limitations on the effective date of this section.

(2) The amendment of 42 Pa.C.S. § 5533(b)(2) shall apply retroactively to civil actions where the limitations period has not expired prior to the effective date of this section.

(3) The addition of 42 Pa.C.S. §§ 5522(c)(3.1), 8522(b)(10), 8528(d), 8542(b)(9) and 8553(e) shall apply as follows:

(i) Prospectively, to a cause of action which arises on or after the effective date of this section.

(ii) Retroactively, to a cause of action if the cause of action arose before the effective date of this section. Nothing in this subparagraph shall do any of the following:

(A) Revive a cause of action as to which the limitation period has expired prior to the effective date of this section.

(B) Permit the application of the addition of 42 Pa.C.S. §§ 5522(c)(3.1), 8522(b)(10), 8528(d), 8542(b)(9) and 8553(e) to a claim:

(I) that is subject to a final judgment which, on the effective date of this section, is not subject to appeal; or

(II) that, on the effective date of this section, has been nonjudicially resolved in its entirety by the parties, in a form which is enforceable.

Section 11. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) Section 10 of this act.

(ii) This section.

(2) The remainder of this act shall take effect upon first passage of House Bill No. 963, Printer's No. 1130 (2019), by both chambers of the General Assembly or immediately, whichever is later.

APPROVED—The 26th day of November, A.D. 2019

TOM WOLF