



June 10, 2009

MEMORANDUM IN OPPOSITION

A.2596-B Assemblywoman Markey / S.2568 Senator Duane An ACT to extend and re-open the Statute of Limitations in specified cases

New Yorkers for Lawsuit Reform, a broad based coalition of businesses, professionals, municipalities, not-for-profits, insurers, and concerned citizens urges **OPPOSITION** to the above referenced bill.

This bill would extend the statute of limitations (civil and criminal) for the prosecution of persons accused of sexual abuse both prospectively and retroactively. **New Yorkers for Lawsuit Reform** does not object in principal to the prospective extension of the current statute of limitations pertaining to sexual abuse cases, and supports legislation introduced in both houses to effectuate such a change (see A.5708A / S.3107A – Assemblyman Vito Lopez / Senator Carl Kruger).

We believe that sexual abuse against anyone, particularly against a child, is reprehensible, intolerable and should be punished to the full extent of the law. However, statutes of limitation serve two key social functions: they allow people to organize their lives free from the threat of litigation, and they improve the soundness of our litigation system by forcing people to sue in a timely fashion. Contrary to these purposes, sexual abuse reviver statutes allow individuals to bring suits against an alleged perpetrator, the institution charged with oversight and supervision, or both, decades after the underlying events are alleged to have occurred.

This legislative initiative to the extent it is retroactive is lacking in merit. The passage of time gives claimants in abuse cases a huge, and fundamentally unfair, litigation advantage. The plaintiffs are alive and alert, while key witnesses for the defendants, including the alleged perpetrator, are either dead or infirm. These cases often rest solely on the strength of the testimonial evidence of the aggrieved party, without any support from documentary evidence or independent witnesses. **The risks of fraud are so significant in sexual abuses cases, given their immense stakes, that a reviver statute cannot be implemented without violating fundamental fairness.**

The preservation of foundational legal principles in civil cases, and avoiding a serious miscarriage of justice that can arise in highly sympathetic situations like this one, is paramount. When legislation is driven by emotion, there can be adverse impacts that well-meaning legislators may not intend. To avoid this problem, lawmakers must approach these difficult cases with an appreciation of all the interests affected. Changes in the law must be examined objectively based on certain core principles. As stated above, when statutes of limitations on child abuse claims are changed retroactively, defendants (and their insurers) cannot provide an adequate defense because of lost, sick or deceased witnesses; missing documents; and faded memories. Defendants themselves often are missing or deceased, particularly if the retroactive time period is decades long. To file a suit respecting a missing, infirmed or deceased defendant who cannot defend him or herself is not fair.

Opportunistic attorneys and plaintiffs can take advantage of retroactive statutes of limitation to exaggerate allegations of abuse and invites fraud. They also can take advantage of questionable legal theories such as repressed memory and delayed realization of the extent of injury. This is exacerbated by widespread media coverage which can lead jurors to pre-judge claims regardless of the evidence provided.

Claims and lawsuits filed don't just punish the abuser, who may not even be alive, but also punish present and future officials and members of affected organizations for conduct or actions of their predecessors. The salutary works of educational and religious institutions are threatened as resources are devoted to the defense of these long dormant claims, including the inevitable cascade of false claims. To allow claims and lawsuits for alleged acts that occurred decades ago, and that have long since passed the statute of limitations, without allowing defendants a fair and adequate defense, is unfair and unjust.

For all the foregoing reasons, **New Yorkers for Lawsuit Reform** urges that this bill be held.

Respectfully submitted,

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New Yorkers for Lawsuit Reform