



Memo of Opposition

S.5893/A.2596-b (Hassell-Thompson/Markey) On Senate Codes Agenda

New Yorkers for Lawsuit Reform **OPPOSES** the above-referenced legislation. New Yorkers for Lawsuit Reform is a not-for-profit association of businesses, professionals, municipalities, not-for-profits, and concerned citizens dedicated to reform of the tort system in order to foster a better business climate and address the costs of lawsuits passed on to all New Yorkers. This legislation amends the criminal procedure law, in relation to the timeliness of prosecutions for certain sex offenses, and the civil practice law and rules, in relation to the timeliness for commencing certain civil actions related to sex offenses.

This bill would extend the statute of limitations (civil and criminal) for the prosecution of persons accused of sexual abuse both prospectively and retroactively. The bill would extend the criminal statute of limitations to cover sexual abuse that occurred at any point before a person reaches 18 if the allegation is made before the victim reaches the age of 28. The bill also provides a 1-year lifting of the Statute of Limitations on civil liability, allowing for civil suits based on all conduct that occurred within the past 35 years or brought by a victim no older than 53 years of age.

While we believe that sexual abuse against anyone, particularly against a child, is reprehensible, intolerable and should be punished to the fullest extent of the law, this bill has troubling implications. A Statute of limitations 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 when memories are fresh and allegations can be defended. Contrary to these purposes, sexual abuse reviver statutes allow individuals to sue an alleged perpetrator, the institution charged with oversight and supervision, or both, decades after the underlying events are alleged to have occurred.

Because the bill allows for all claims that occurred within the past 35 years or brought by a victim no older than 53 years of age, claimants have a huge, and fundamentally unfair, litigation advantage. The plaintiffs are alive and alert, while key witnesses for the defendants, including the alleged perpetrator, are often either dead or infirm, documents will be missing, and memories will have faded. These problems are present in all cases, but the problems are only compounded when decades have elapsed. Cases then 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 significant, and the requirement that plaintiffs receive a certificate of merit does not adequately address the problem.

Claims and lawsuits filed do not 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 the above reasons, New Yorkers for Lawsuit Reform respectfully urges you to vote against approval of **S.5893/A.2596-b**.