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LEGAL ALERT

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Governor Signs Bill Eliminating Statute of Limitations, Expanding Passive Abuser Liability and Reviving Expired Claims Under the Child Sexual Abuse Act, N.J.S.A. § 2A:61B-1, et seq.

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On May 13, 2019, New Jersey Governor Phil Murphy signed Senate Bill S477 ("S477") into law.[1] This legislation: (i) eliminates the two-year statute of limitations on child sexual abuse claims brought under the New Jersey Child Sexual Abuse Act, N.J.S.A. § 2A:61B-1, et seq. (the "Act"); (ii) resurrects certain child sexual abuse claims that expired prior to the passage of the Act; and (iii) expands the category of individuals that can be held liable as passive sexual abusers under the Act. The sweeping changes effected by S477 may spur a dramatic increase in the filing of decades-old sexual abuse claims against public and private institutions that unknowingly employed a child sexual abuser or on whose premises child sexual abuse occurred.

Elimination of the Two-Year Statute of Limitations and Resurrection of Expired Claims

Under the prior iteration of the Act, child sexual abuse victims had to bring their claims against their abuser (or passive abuser, *discussed below*) "within two years after reasonable discovery" of their "injury and its causal relationship to the act of sexual abuse." N.J.S.A. § 2A:61B-1(b). In other words, the statute of limitations did not run "until the injured party discover[ed], or by an exercise of reasonable diligence and intelligence should have discovered that he may have a basis for an actionable claim." Lopez v. Swyer, 62 N.J. 267, 272 (1973); R.L. v. Voytac, 199 N.J. 285, 299 (2009). If a court determined that a victim failed to file their complaint within two years after accrual of their claim, it could further toll the statute of limitations if the victim's delay in asserting their claim was the product of their "mental state, duress by the defendant, or any other equitable grounds." N.J.S.A. § 2A:61B-1(c).

S477 eliminates the two-year statute of limitations and provides that an action brought pursuant to the act "may be commenced at any time." The practical effect of this revision is to permit victims to raise such claims until they reach the age of 55 or within seven years after they discover the connection between their sexual abuse and injuries. Apart from expanding the statute

[1] An identical companion bill, Assembly Bill 3648, passed the New Jersey General Assembly.

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of limitations, S477 also creates a two-year "grace period," commencing on the effective date of the bill, during which any child sexual abuse claims that were previously dismissed by a court pursuant to the current two-year statute of limitations may be re-asserted.

The expanded statute of limitations period and two-year "grace period" apply to both active and passive abuser claims.

Expanding the Scope of Passive Abuser Liability

Historically, under the Act, "[a] parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse. . . ." N.J.S.A. § 2A:61B-1(a)(1) (emphasis added). This is known as passive abuser liability. Because most public and private institutions are not the parents or guardians of child sexual abuse victims, the phrase "in loco parentis within the household" is the primary basis upon which institutions are held liable under the Act. Courts have narrowly interpreted the phrase "in loco parentis within the household" such that an accused may be held liable as a passive abuser only if they acted as a "parental substitute[ ]" and "provide[d] . . . amenities normally associated with a home environment . . . " to the victim. J.P. v. Smith, 444 N.J. Super. 507, 523-24 (App. Div. 2016). Stated differently, the accused must have exercised some "degree of 'residential' custody" over the victim that is "more than fleeting and temporary in nature." Id. Traditionally, courts have found that boarding schools and detention centers can be held liable as passive sexual abusers because the child victims essentially reside at those institutions; on the other hand, day schools are not held liable as passive abusers under the Act because their relationship with their students lacks a sufficient degree of residential custody.

S477 completely dismantles the statutory scheme described above by removing the phrase "in loco parentis within the household" from the Act. Under S477 any individual or entity may be held liable as a passive sexual abuser provided they permitted or acquiesced in the sexual abuse. As such, institutions that unwittingly employ child sexual abusers or happen to own property upon which child sexual abuse was perpetrated without their knowledge may find themselves named as defendants when victims seek redress for their injuries.

Preparing for a Wave of Claims

In light of the foregoing, many institutions, organizations and companies will have to deal with the most difficult aspect of defending against old claims, namely the passage of time. Over the course of time, relevant documents and exculpatory evidence dissipate, witness memories fade and/or some crucial witnesses die. While there is not much an institution can do to battle time, it must keep track of the one commodity that may help alleviate some of the expenses that will invariably arise from passage of S477: insurance. We strongly encourage institutions to speak with their attorneys to consider possible exposure to claims. Preparation will likely involve researching insurance coverage over the last few decades, marshaling prior insurance policies, and implementing a practice of retaining all insurance policies in paper and digital format.

This is also a very appropriate time to review all procedures relating to minors with your attorney, including background checks, supervision, record keeping and complaint procedures. This applies to a wide range of companies, institutions and organizations who provide services to minors, interact with minors as volunteers or interns, or have minors as customers.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.