

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4592

BY DELEGATES FLEISCHAUER, LOVEJOY, FLUHARTY, S.

BROWN, CAMPBELL, MILLER, CANESTRARO, WALKER,

LAVENDER-BOWE AND ROWAN

[Introduced January 29, 2020; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §14-2-21 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §29-12A-6 of said code; to amend said code by adding thereto a new section,
 3 designated §51-1-23; to amend and reenact §55-2-15 of said code; to amend said code
 4 by adding thereto two new sections, designated §55-2-15a and §55-2-15b; and to amend
 5 said code by adding thereto a new section, designated §61-11-9a, all relating to criminal
 6 and civil sexual offenses; extending periods of limitations for commencing certain criminal
 7 and civil sexual offenses; reviving certain civil claims involving sexual offenses committed
 8 against minors; authorizing and requesting judicial training in crimes involving sexual
 9 assault and sexual abuse, and rules for adjudication of revived child sexual abuse cases.

Be it enacted by the Legislature of West Virginia:

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-21. Periods of limitation made applicable.

1 (a) The commission shall may not take jurisdiction of any claim, whether accruing before
 2 or after ~~the effective date of this article~~ July 1, 1967, unless notice of such the claim be is filed
 3 with the clerk within such the period of limitation ~~as would be~~ that is applicable under the pertinent
 4 provisions of the Code of West Virginia, 1931, as amended, if the claim were against a private
 5 person, firm or corporation and the constitutional immunity of the state from suit were not involved.
 6 ~~and such~~ Except as provided in subsection (b) of this section, the period of limitation may not be
 7 waived or extended.

8 ~~The foregoing provision shall not be held to limit or restrict the right of any person, firm or~~
 9 ~~corporation who or which had a claim against the state or any state agency, pending before the~~
 10 ~~Attorney General on the effective date of this article (July 1, 1967), from presenting such claim to~~
 11 ~~the West Virginia Legislative Claims Commission, nor shall it limit or restrict the right to file such~~
 12 ~~a claim which was, on the effective date of this article (July 1, 1967), pending in any court of~~

13 ~~record as a legal claim and which, after such date was or may be adjudicated in such court to be~~
14 ~~invalid as a claim against the state because of the Constitutional immunity of the state from suit~~

15 (b)(1) Claims resulting from sexual abuse may be commenced, against any party whose
16 intentional or negligent acts or omissions are alleged to have resulted in the commission of sexual
17 abuse, on or before the claimant or infant claimant reaches the age of 55. The time limitation for
18 bringing an action provided in subsection (a) of this section does not apply to any claim brought
19 under this subsection.

20 (2) A claim resulting from sexual abuse is a claim to recover damages for physical,
21 psychological or other injury or condition suffered as a result of conduct of a sexual nature which
22 includes, but is not limited to:

23 (A) A sexual offense as defined in §61-8B-1 et seq. of this code;

24 (B) Incest as defined in §61-8-12 of this code, committed against the person who was less
25 than 18 years of age;

26 (C) The use of the person in a sexual performance as defined in §61-8C-1 et seq. of this
27 code; or

28 (D) A predecessor statute to those identified in clauses (A), (B), and (C) of this subdivision
29 that prohibited that conduct at the time of the act, which conduct was committed against the
30 person who was less than 18 years of age.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-6. Limitation of actions; specification of amount of damages not allowed.

1 (a) An action against a political subdivision to recover damages for injury, death, or loss
2 to persons or property allegedly caused by any act or omission in connection with a governmental
3 or proprietary function, except as provided in subsection (b) of this section, shall be brought within
4 two years after the cause of action arose or after the injury, death or loss was discovered or

5 reasonably should have been discovered, whichever last occurs or within any applicable shorter
6 period of time for bringing the action provided by this code. This section applies to actions brought
7 against political subdivisions by all persons, governmental entities and the state.

8 (b) An action against a political subdivision to recover damages for injury, death or loss to
9 a minor, brought by or on behalf of a minor who was under the age of 10 years at the time of such
10 injury, shall be commenced within two years after the cause of action arose or after the injury,
11 death or loss was discovered or reasonably should have been discovered, whichever last occurs,
12 or prior to the minor's 12th birthday, whichever provides the longer period.

13 (c) The periods of limitations set forth in this section shall be tolled for any period during
14 which the political subdivision or its representative has committed fraud or collusion by concealing
15 or misrepresenting material facts about the injury.

16 (d) In the complaint filed in a civil action against a political subdivision or an employee of
17 a political subdivision to recover damages for injury, death or loss to persons or property allegedly
18 caused by an act or omission of such political subdivision or employee, whether filed in an original
19 action, cross-claim, counterclaim, third-party claim, or claim for subrogation, the complainant shall
20 include a demand for a judgment for the damages that the judge in a nonjury trial or the jury in a
21 jury trial finds that the complainant is entitled to be awarded, but shall not specify in the demand
22 any monetary amount for damages sought.

23 (e)(1) An action seeking to recover damages resulting from sexual abuse may be
24 commenced, against any party whose intentional or negligent acts or omissions are alleged to
25 have resulted in the commission of sexual abuse, on or before the complainant or infant
26 complainant reaches the age of 55. The time limitations for bringing an action provided in
27 subsection (a) and (b) of this section do not apply to any claim brought under this subsection.

28 (2) For purposes of this subsection "an action seeking to recover damages resulting from
29 sexual abuse" is an action to recover damages for physical, psychological or other injury or
30 condition suffered as a result of conduct of a sexual nature which includes, but is not limited to:

- 31 (A) A sexual offense as defined in §61-8B-1 et seq. of this code;
- 32 (B) Incest as defined in §61-8-12 of this code, committed against the person who was less
- 33 than 18 years of age;
- 34 (C) The use of the person in a sexual performance as defined in §61-8C-1 et seq. of this
- 35 code; or
- 36 (D) A predecessor statute to those identified in clauses (A), (B) and (C) of this subdivision
- 37 that prohibited that conduct at the time of the act, which conduct was committed against the
- 38 person who was less than 18 years of age.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-23. Judicial training in crimes involving sexual assault and the sexual abuse; rules for adjudication of revived child sexual abuse cases.

- 1 (a) The Supreme Court of Appeals is authorized and requested to provide training for
- 2 judges and justices with respect to crimes involving sexual assault, and the sexual abuse of
- 3 minors.
- 4 (b) The Supreme Court of Appeals is authorized and requested to promulgate rules for the
- 5 timely adjudication of revived actions brought pursuant to §55-2-15a of this code.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-15. ~~Special and~~ Claims resulting from sexual abuse; general savings as to persons under disability.

- 1 ~~(a) A personal action for damages resulting from sexual assault or sexual abuse of a~~
- 2 ~~person who was an infant at the time of the act or acts alleged, shall be brought against the~~
- 3 ~~perpetrator of the sexual assault or abuse within four years after reaching the age of majority or~~
- 4 ~~within four years after discovery of the sexual assault or sexual abuse, whichever is longer~~

5 (a)(1) Claims resulting from sexual abuse may be commenced, against any party whose
6 intentional or negligent acts or omissions are alleged to have resulted in the commission of sexual
7 abuse, on or before the claimant or infant claimant reaches the age of 55.

8 (2) A claim resulting from sexual abuse is a claim to recover damages for physical,
9 psychological, or other injury or condition suffered as a result of conduct of a sexual nature which
10 includes, but is not limited to:

11 (A) A sexual offense as defined in §61-8B-1 et seq. of this code;

12 (B) Incest as defined in §61-8-12 of this code, committed against the person who was less
13 than 18 years of age;

14 (C) The use of the person in a sexual performance as defined in §61-8C-1 et seq. of this
15 code; or

16 (D) A predecessor statute to those identified in clauses (A), (B), and (C) of this subdivision
17 that prohibited that conduct at the time of the act, which conduct was committed against the
18 person who was less than 18 years of age.

19 (b) If any person to whom the right accrues to bring any personal action other than an
20 action described in subsection (a) of this section, suit or *scire facias*, or any bill to repeal a grant,
21 shall be, at the time the same accrues, an infant or insane, the same may be brought within the
22 like number of years after his or her becoming of full age or sane that is allowed to a person
23 having no such impediment to bring the same after the right accrues, or after such
24 acknowledgment as is mentioned in §55-2-8 of this code, except that ~~it shall~~ in no case may it be
25 brought after 20 years from the time when the right accrues.

§55-2-15a. Certain child sexual abuse cases.

1 (a) Notwithstanding §55-2-15 of this code and any provision of law, all civil claims or cause
2 of actions for acts described in subsection (b) of this section which are barred as of the effective
3 date of this section because the applicable period of limitation has expired, or the plaintiff
4 previously failed to file a notice of claim or a notice of intention to file a claim, is hereby revived.

5 An action thereon may be commenced not earlier than six months after, and not later than one
6 year and six months after the effective date of this section.

7 (b) Subsection (a) of this section applies to every civil claim or cause of action brought
8 against any party alleging intentional or negligent acts or omissions which conduct was committed
9 against the person who was less than 18 years of age by a person for physical, psychological or
10 other injury or condition suffered as a result of conduct of a sexual nature which includes, but is
11 not limited to:

12 (1) A sexual offense as defined in §61-8B-1 et seq. of this code;

13 (2) Incest as defined in §61-8-12 of this code, committed against the person who was less
14 than 18 years of age;

15 (3) The use of the person in a sexual performance as defined in §61-8C-1 et seq. of this
16 code; or

17 (4) A predecessor statute to those identified in clauses (i), (ii) and (iii) of this paragraph
18 that prohibited that conduct at the time of the act.

19 (c) In claims commenced under this section:

20 (1) In addition to any other defense and affirmative defense that may be available in
21 accordance with law, rule or the common law; and

22 (2) Dismissal of a previous action, ordered before the effective date of this section, on
23 grounds that the previous action was time barred, or for failure of a party to file a notice of claim
24 or a notice of intention to file a claim, is not grounds for dismissal of a revival action pursuant to
25 this section.

§55-2-15b. Limitation in civil sexual assault actions.

1 (a) In any civil action for recovery of damages suffered as a result of sexual assault, where
2 the assault occurred on or after the plaintiff's 18th birthday, the time for commencement of the
3 action is the later of the following:

4 (1) Within 10 years from the date of the last act, attempted act, or assault with the intent

5 to commit an act, of sexual assault by the defendant against the plaintiff; or

6 (2) Within three years from the date the plaintiff discovers or reasonably should have
 7 discovered that an injury or illness resulted from an act, attempted act, or assault with the intent
 8 to commit an act of sexual assault by the defendant against the plaintiff.

9 (b) As used in this section “defendant” means only an individual who commits the acts
 10 described in this section or who, in a criminal proceeding, could be charged with criminal liability
 11 for the commission of such acts and does not apply to any related civil claim or cause of action
 12 arising from such acts. This section does not require that a criminal charge be brought or a
 13 criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil
 14 judgment pursuant to this section or require that any of the rules governing a criminal proceeding
 15 are applicable to any such civil action.

16 (c) This section applies to any action described in subdivision (a) that is commenced on
 17 or after April 1, 2020.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-9a. Criminal prosecution of sexual offense misdemeanors committed against a child.

1 Notwithstanding the limitation in §61-11-9 of this code, a prosecution for a misdemeanor
 2 involving a sexual offense under §61-8B-1 *et seq.* and §61-8C-1 *et seq.* of this code, committed
 3 against a child less than 18 years of age must be commenced within one year from when the
 4 child reaches the age of 23 or the offense is reported to a law-enforcement agency or the Central
 5 Abuse Registry established in §15-2C-1 *et seq.* of this code, whichever occurs first.

NOTE: The purpose of this bill is to extend periods of limitations for commencing certain criminal and civil sexual offenses and to revive certain civil claims involving sexual offenses committed against minors.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.