

HOUSE BILL REPORT

2SHB 1618

As Passed House:

March 2, 2023

Title: An act relating to providing access to justice for survivors of childhood sexual abuse.

Brief Description: Concerning the statute of limitations for childhood sexual abuse.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Farivar, Simmons, Wylie, Berry, Walen, Fosse, Morgan, Macri, Pollet, Doglio, Reed, Caldier and Orwall).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/31/23, 2/3/23 [DPS];

Appropriations: 2/16/23, 2/22/23 [DP2S(w/o sub CRJ)].

Floor Activity:

Passed House: 3/2/23, 82-14.

Brief Summary of Second Substitute Bill

- Eliminates the statute of limitations in civil actions for injury suffered as a result of childhood sexual abuse, nonsexual physical abuse committed concurrently with childhood sexual abuse, or sexual abuse that continues into adulthood if the sexual abuse is part of a pattern of childhood sexual abuse.
- Applies retroactively to all claims, causes of action, and proceedings, regardless of when the claim or cause of action arose.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hansen, Chair; Farivar, Vice Chair; Cheney,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Entenman, Goodman, Peterson, Rude, Thai and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

Staff: Yelena Baker (786-7301).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Civil Rights & Judiciary. Signed by 24 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Couture, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 1 member: Representative Stokesbary, Ranking Minority Member.

Minority Report: Without recommendation. Signed by 4 members: Representatives Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler and Connors.

Staff: Jessica Van Horne (786-7288).

Background:

Statutes of limitations in civil cases set the amount of time a plaintiff may wait to commence an action following an injurious act or harm. Historically, courts and legislatures identify two basic reasons for these time limits: to encourage plaintiffs to bring actions while reliable evidence is still available for use in a trial; and to protect potential defendants from uncertainty regarding potential litigation.

The statutes of limitations provided for civil actions varies depending on the type of action. In Washington, statutes of limitations for various civil actions include: one year for certain claims against police officers; two years for libel and slander claims; three years for personal injury claims; six years for actions on written contracts; and 10 years for recovery of real property or past due child support.

Certain actions allow for a rule of "discovery" when determining when the statute of limitations begins to run. This rule recognizes that in some cases, such as medical malpractice and childhood sexual abuse, the victim may not know of the harm caused by the defendant until after the statute of limitations has technically expired. Originally a court-made rule, some statutes now codify this exception.

For childhood sexual abuse, the statute of limitations for civil actions for damages is the later of three dates:

- three years from the commission of the act alleged to have caused the injury or condition;
- three years from the time the victim discovered or reasonably should have discovered that the injury or the condition was caused by the act; or
- three years from the time that the victim discovered that the act caused the injury for which the claim is brought.

None of these periods begin until a child turns 18, and the knowledge of a custodial parent or guardian may not be imputed to a person under the age of 18 years. Additionally, the victim does not need to establish which act in a series of continuing sexual abuse or exploitation caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act of a common scheme or plan of sexual abuse or exploitation by the same perpetrator.

Courts interpret the childhood sexual abuse statute of limitations as beginning to run when the abuse victim discovers the nexus, or connection, between sexual abuse and later problems or injuries. Courts have recognized that this discovery may be delayed by a number of factors uniquely related to childhood sexual abuse, including repressed memories or post-traumatic stress disorder.

In interpreting this statute broadly in favor of plaintiffs, courts cite the extensive findings of the Legislature in enacting a 1991 amendment to the statute. These findings include: that childhood sexual abuse is traumatic, causing long-lasting damage; that victims may repress abuse for many years and be unable to connect this abuse with later injuries; and that despite awareness of abuse, serious reactions to the abuse may develop years later.

Courts have ruled that the childhood sexual abuse statute of limitations applies not just to claims against the perpetrator of sexual abuse, but also to claims of negligence against parties who failed to protect the child, such as schools, state agencies, churches, parents, and others having a special relationship with the child.

Summary of Second Substitute Bill:

There is no time limit to bring a claim or commence an action by a person for recovery of damages for injury suffered as a result of:

- childhood sexual abuse;
- nonsexual physical abuse committed concurrently with childhood sexual abuse by the same perpetrator; or
- sexual abuse that continues beyond the date the child reaches the age of 18 years, if the sexual abuse is part of a pattern or a series of childhood sexual abuse by the same perpetrator.

The elimination of the childhood sexual abuse statute of limitations applies to all claims, causes of actions, and proceedings, regardless of when the claim or cause of action arose.

The bill is remedial in nature and must be broadly construed as a nonexclusive remedy for victims of childhood sexual abuse. The bill does not eliminate the common law discovery rule for victims of childhood sexual abuse, physical abuse, and exploitation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Civil Rights & Judiciary):

(In support) Childhood sexual abuse victims are all too often denied both criminal and civil justice because the statute of limitations has run out. Unlike traditional personal injury cases, many victims of childhood sexual abuse cannot bring their claims immediately because of the extensive trauma caused by the abuse. Trauma significantly affects the way a human brain works, and it can take a long time for survivors, especially children, to be ready to speak their truth and share their stories. Trauma also causes serious psychological, emotional, physical, and educational setbacks which further delay the victims' understanding of the true cause of their harms. In one case, a 16-year-old victim lived with shame, depression, drug addiction, and suicidal ideations for years before being able to speak out and seek justice. The age span at which victims disclose abuse is between 50 and 70 years old, with the average age of 52 years. This bill will make a significant difference in the lives of survivors by giving them the time they need to process, come forward, and start living a life they deserve, instead of just surviving day to day.

Survivors are not concerned about getting a big jury verdict because no amount of money will make them whole or replace the years they have lost. Survivors want to come forward with their cases so that no other child will endure the same abuse they did.

In 1991 the Legislature broadened the protections for childhood sex abuse survivors, but there has been a steady erosion of these protections since then. Louisiana recently abolished its statute of limitations for childhood sexual abuse. Many other states have revived childhood sexual abuse claims, and Congress is also making changes. These reforms identify hidden sexual predators, shift the costs of abuse away from victims and taxpayers to the perpetrators, and educate the public about the prevalence and impacts of this abuse.

The bill should be clarified to ensure that it applies to all childhood sexual abuse claims and

allows remedies for all survivors. The bill should be amended to ensure that it is properly construed and enhances the rights of child victims without unintentionally voiding other protections that might exist.

(Opposed) The bill's complete abandonment of the statute of limitations is unprecedented. Statutes of limitations serve a critical purpose because they allow judges and juries to evaluate liability and make accurate decisions before records are discarded, witnesses are gone, and memories fade. Every type of civil claim must be filed in a finite period of time, whether it is a person killed by a drunk driver or someone severely injured by a potentially defective product. Never before has the state completely eliminated a civil statute of limitations, and the precedent this bill could set is of great concern.

The retroactivity of the bill poses due process concerns and practical issues for schools, nonprofit organizations, businesses, and others. There may be no doubt that a plaintiff experienced horrific abuse, but it will be difficult, if not impossible, to determine whether an organization had sufficient policies and practices in place in cases that may go back decades and where the perpetrator has died, relevant staff has gone, and records have not been saved.

Eliminating a statute of limitations here will lead to future calls for permitting lawsuits based on conduct that occurred decades ago. There will be many sympathetic plaintiffs, important causes, unpopular industries, and other past injustices.

While many states have revived sexual abuse claims to some degree over the past 20 years, most of those laws included significant constraints on the types of claims that they revived. These constraints are not included in this bill.

If the Legislature feels that the current statute of limitations does not provide sufficient time, there are alternatives to completely eliminating the statute of limitations, such as prospectively providing a longer finite period of time for plaintiffs to bring their claims.

Staff Summary of Public Testimony (Appropriations):

(In support) Imposing a time limitation on victims of childhood sexual abuse is unfair. In 1990 the Legislature passed a special childhood sexual abuse statute to make sure the courts were not just throwing out childhood sexual abuse claims. In the last 30 years, the discretion that the Legislature left with the courts has eroded those protections. In one case, defendants in a lawsuit immediately made a motion to have the case thrown out based on the statute of limitations.

Some victims of childhood sexual abuse are able to heal in a couple of years, and some take years and decades to heal. The trauma of sexual abuse deters most survivors from filing a lawsuit. When the statute of limitations runs out, those few survivors who did not file a lawsuit are punished simply because they disclosed the harm they suffered at some point in

their lives to family, health care providers, or to law enforcement.

The concern that this bill may open the floodgates of litigation is understandable, but that argument does not hold water. Other jurisdictions have passed laws to eliminate the statute of limitations or to revive claims, and the courts have not been flooded with cases. Many cases cannot be pursued due to the passage of time or because perpetrators themselves have died or disappeared, escaping justice. Additionally, this argument should not be a reason to curtail the ability of those survivors who are able to seek justice when they feel ready.

This bill helps expose hidden sexual predators and fully address the epidemic of child rape, sodomy, and child sexual assault. This bill is a pathway to justice for the crimes that have been perpetrated against children.

No amount of money will make victims whole, but this bill at least shifts the significant financial burden of childhood sexual abuse away from the victim and taxpayers and onto the perpetrators and entities that hide the abuse.

(Opposed) The bill's unlimited revival of decades-old claims will result in hundreds of negligence claims against public schools and agencies that provide social services, recreational programs, and juvenile justice programs. It is going to be impossible to evaluate liability due to the loss of evidence, records, and witnesses over time.

Other states that have adopted a similar approach have experienced a significant fiscal impact as a result of thousands of revived claims, hundreds of them against public entities.

(Other) Under the current version of the bill, a big lawsuit against a school will have to be paid out of current dollars for an individual school district, and schools still need those education funds.

If decades-old claims are going to be revived, the Legislature should create a childhood sexual abuse victims' compensation fund to be administered by the Department of Labor and Industries, which already administers a crime victims' compensation fund.

A compensation fund would be better for victims who frequently do not come forward with claims because they do not want to relive their painful experiences by being deposed or testifying in court. A lot more money could be going to victims instead of being spent on transactional costs of bringing a lawsuit.

A compensation fund would be better for schools and other public entities when trying to address decades-old claims, which are very expensive and hard to investigate because they require researching whether a public entity had any insurance coverage decades ago.

Persons Testifying (Civil Rights & Judiciary): (In support) Representative Darya Farivar, prime sponsor; Kathryn Robb, CHILD USAAdvocacy; Renee Williams, National

Crime Victim Bar Association; Courtney Butler; and Chris Love, Darrell Cochran, and Nate Roberts, Washington State Association for Justice.

(Opposed) Cary Silverman, American Tort Reform Association.

Persons Testifying (Appropriations): (In support) Amy Yount; Darrell Cochran and Chris Love, Washington State Association for Justice; Courtney Butler; Renee Williams, National Crime Victim Bar Association; Riddhi Mukhopadhyay, Sexual Violence Law Center; and Kathryn Robb, CHILD USAAdvocacy.

(Opposed) Cary Silverman, American Tort Reform Association.

(Other) Tyna Ek, Washington Schools Risk Management Pool.

Persons Signed In To Testify But Not Testifying (Civil Rights & Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.