

DRAFT LBDC

A BUDGET BILL submitted by the Governor
in accordance with Article VII of the Constitution

AN ACT to amend the criminal procedure law, in relation to eliminating the statute of limitations for any sexually related offense committed against a child; to amend the general municipal law, the court of claims act and the education law, in relation to removing the requirement of filing a notice of claim for a claim for injury suffered from a sexually related offense committed against a child; to amend the civil practice law and rules, in relation to extending the statute of limitations for civil cases for any claim for injury suffered from a sexually related offense against a child to fifty years; to amend the civil practice law and rules, in relation to reviving any time-barred claim for injury suffered from a sexually related offense committed against a child for a period of one year; and to amend the civil practice law and rules, in relation to giving trial preference to certain child sexual abuse cases (Part __);

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 PART __

2 Section 1. Paragraph (f) of subdivision 3 of section 30.10 of the
3 criminal procedure law, as separately amended by chapters 3 and 320 of
4 the laws of 2006, is amended to read as follows:

5 (f) [For purposes of a] (i) A prosecution involving a [sexual] sexual-
6 ly related offense [as defined in article one hundred thirty of the
7 penal law, other than a sexual offense delineated in paragraph (a) of
8 subdivision two of this section,] committed against a child less than
9 eighteen years of age, [incest in the first, second or third degree as
10 defined in sections 255.27, 255.26 and 255.25 of the penal law committed
11 against a child less than eighteen years of age, or use of a child in a

1 sexual performance as defined in section 263.05 of the penal law,] and
2 which is a felony, may be commenced at any time. For all other sexually
3 related offenses the period of limitation shall not begin to run until
4 the child has reached the age of eighteen or the offense is reported to
5 a law enforcement agency or statewide central register of child abuse
6 and maltreatment, whichever occurs earlier.

7 (ii) For purposes of this paragraph, a sexually related offense shall
8 mean any offense listed in article one hundred thirty, two hundred thir-
9 ty, two hundred thirty-five, two hundred forty-five, or two hundred
10 sixty-three of the penal law, or sections 120.70 (luring a child),
11 240.37 (loitering for the purposes of engaging in a prostitution
12 offense), 250.45 (unlawful surveillance in the second degree), 250.50
13 (unlawful surveillance in the first degree), 255.15 (bigamy), 255.25
14 (incest in the third degree), 255.26 (incest in the second degree),
15 255.27 (incest in the first degree), subdivision one of section 260.20
16 (unlawfully dealing with a child in the first degree), or subdivision
17 four of section 260.32 (endangering the welfare of a vulnerable elderly
18 person, or an incompetent or physically disabled person in the second
19 degree) of the penal law.

20 § 2. Subdivision 8 of section 50-e of the general municipal law, as
21 amended by chapter 24 of the laws of 1988, is amended to read as
22 follows:

23 8. Inapplicability of section. (a) This section shall not apply to
24 claims arising under the provisions of the workers' compensation law,
25 the volunteer firefighters' benefit law, or the volunteer ambulance
26 workers' benefit law or to claims against public corporations by their
27 own infant wards.

1 (b) This section shall not apply to any claim made for physical,
2 psychological, or other injury or condition suffered as a result of
3 conduct that would constitute a sexually related offense as stated in
4 subparagraph (ii) of paragraph (f) of subdivision three of section 30.10
5 of the criminal procedure law committed against a child less than eigh-
6 teen years of age, including any claims against an entity at which the
7 person who committed the conduct was employed, volunteered, or similarly
8 engaged.

9 § 3. Section 50-i of the general municipal law is amended by adding a
10 new subdivision 5 to read as follows:

11 5. Notwithstanding any provision of law to the contrary, this section
12 shall not apply to any claim made against a city, county, town, village,
13 fire district or school district for physical, psychological, or other
14 injury or condition suffered as a result of conduct that would consti-
15 tute a sexually related offense as stated in subparagraph (ii) of para-
16 graph (f) of subdivision three of section 30.10 of the criminal proce-
17 dure law committed against a child less than eighteen years of age,
18 including any claims against an entity at which the person who committed
19 the conduct was employed, volunteered, or similarly engaged.

20 § 4. Section 10 of the court of claims act is amended by adding a new
21 subdivision 10 to read as follows:

22 10. Notwithstanding any provision of law to the contrary, this section
23 shall not apply to any claim made against the state for physical,
24 psychological, or other injury or condition suffered as a result of
25 conduct that would constitute a sexually related offense as stated in
26 subparagraph (ii) of paragraph (f) of subdivision three of section 30.10
27 of the criminal procedure law committed against a child less than eigh-
28 teen years of age, including any claims against an entity at which the

1 person who committed the conduct was employed, volunteered, or similarly
2 engaged.

3 § 5. Subdivision 2 of section 3813 of the education law, as amended by
4 chapter 346 of the laws of 1978, is amended to read as follows:

5 2. Notwithstanding anything to the contrary hereinbefore contained in
6 this section, no action or special proceeding founded upon tort shall be
7 prosecuted or maintained against any of the parties named in this
8 section or against any teacher or member of the supervisory or adminis-
9 trative staff or employee where the alleged tort was committed by such
10 teacher or member or employee acting in the discharge of his duties
11 within the scope of his employment and/or under the direction of the
12 board of education, trustee or trustees, or governing body of the school
13 unless a notice of claim shall have been made and served in compliance
14 with section fifty-e of the general municipal law. Every such action
15 shall be commenced pursuant to the provisions of section fifty-i of the
16 general municipal law, provided, however, that this section shall not
17 apply to any claim made against a school (public, private, or charter),
18 a school district, or any employee of such school or district, for phys-
19 ical, psychological, or other injury or condition suffered as a result
20 of conduct that would constitute a sexually related offense as stated in
21 subparagraph (ii) of paragraph (f) of subdivision three of section 30.10
22 of the criminal procedure law committed against a child less than eigh-
23 teen years of age, including any claims against an entity at which the
24 person who committed the conduct was employed, volunteered, or similarly
25 engaged.

26 § 6. Section 213-c of the civil practice law and rules, as added by
27 chapter 3 of the laws of 2006, is amended to read as follows:

1 § 213-c. Action by victim of conduct constituting certain [sexual]
2 sexually related offenses. 1. Notwithstanding any other limitation set
3 forth in this article, a civil claim or cause of action to recover from
4 a defendant as hereinafter defined, for any claim related to the phys-
5 ical, psychological or other injury or condition suffered by a person as
6 a result of acts by such defendant of rape in the first degree as
7 defined in section 130.35 of the penal law, or criminal sexual act in
8 the first degree as defined in section 130.50 of the penal law, or
9 aggravated sexual abuse in the first degree as defined in section 130.70
10 of the penal law, or course of sexual conduct against a child in the
11 first degree as defined in section 130.75 of the penal law, or conduct
12 by an individual that would constitute a sexually related offense as
13 stated in subparagraph (ii) of paragraph (f) of subdivision three of
14 section 30.10 of the criminal procedure law may be [brought within five
15 years] commenced within fifty years of the commission of the act consti-
16 tuting the sexually related offense. As used in this section, the term
17 "defendant" shall mean [only a person who commits the acts described in
18 this section or who, in a criminal proceeding, could be charged with
19 criminal liability for the commission of such acts pursuant to section
20 20.00 of the penal law and shall not apply to any related civil claim or
21 cause of action arising from such acts] a person who commits a sexually
22 related offense, as well as a public corporation, municipality, school
23 (public, private, or charter), partnership, corporation, association, or
24 any other entity of which the person was, at the time of the conduct, an
25 employee, volunteer, or any other individual for whom such entity is
26 responsible. Nothing in this section shall be construed to require that
27 a criminal charge be brought or a criminal conviction be obtained as a
28 condition of bringing a civil cause of action or receiving a civil judg-

1 ment pursuant to this section or be construed to require that any of the
2 rules governing a criminal proceeding be applicable to any such civil
3 action.

4 2. In an action brought pursuant to this section, the burden shall be
5 on the plaintiff to prove by a preponderance of the evidence that the
6 acts constituting the sexually related offense were committed by the
7 defendant.

8 § 7. The civil practice law and rules is amended by adding a new
9 section 214-g to read as follows:

10 § 214-g. Certain child sexual abuse cases. Notwithstanding any
11 provision of law that imposes a period of limitation to the contrary,
12 every civil claim or cause of action, including claims filed against a
13 person, public corporation, municipality, school (public, private, or
14 charter), partnership, corporation, association, or any other entity
15 based on negligence, recklessness, or intentional conduct, brought by a
16 person for physical, psychological, or other injury or condition
17 suffered as a result of conduct that would constitute a sexually related
18 offense as stated in subparagraph (ii) of paragraph (f) of subdivision
19 three of section 30.10 of the criminal procedure law committed against a
20 child less than eighteen years of age, that is barred as of the effec-
21 tive date of this section because the applicable period of limitation
22 has expired or such person had previously failed to file a notice of
23 claim, is hereby revived, and action thereon may be commenced on or
24 before one year after the effective date of this section.

25 § 8. Subdivision (a) of rule 3403 of the civil practice law and rules
26 is amended by adding a new paragraph 7 to read as follows:

27 7. any action which has been received pursuant to section two hundred
28 fourteen-g of this chapter.

1 § 9. The provisions of this act shall be severable, and if any clause,
2 sentence, paragraph, subdivision or part of this act shall be adjudged
3 by any court of competent jurisdiction to be invalid, such judgment
4 shall not affect, impair, or invalidate the remainder thereof, but shall
5 be confined in its operation to the clause, sentence, paragraph, subdivi-
6 vision or part thereof directly involved in the controversy in which
7 such judgment shall have been rendered.

8 § 10. This act shall take effect immediately; provided, however, that
9 the amendments to section 213-c of the civil practice law and rules made
10 by section six of this act shall apply to any cause of action, regard-
11 less of the date on which such cause of action accrued; and provided
12 further that section seven of this act shall take effect six months
13 after this act shall have become a law.