

HOUSE BILL REPORT

HB 1040

As Reported by House Committee On:
Judiciary

Title: An act relating to removing the statute of limitations on childhood sexual abuse civil cases.

Brief Description: Removing the statute of limitations on childhood sexual abuse civil cases.

Sponsors: Representatives O'Brien, Schoesler, Dickerson, Chandler, Kagi, Talcott, Kenney, Morris, Veloria, Chase, Rockefeller, Benson, Campbell, Sullivan and Darneille.

Brief History:

Committee Activity:

Judiciary: 1/21/03, 2/25/03 [DPS].

Brief Summary of Substitute Bill

- Extends the statute of limitations for civil suits based on childhood sexual abuse to 10 years from the commission of the act, or 10 years from the time the victim made the connection between the act and the injury suffered.
- Applies the new statute of limitations to claims arising on or after the effective date of the act, as well as claims not already time-barred as of the effective date of the act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Aaron Anderson (786-7119), Edie Adams (786-7180).

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:

1. To encourage plaintiffs to bring actions while reliable evidence is still available for use in a trial; and
2. To protect potential defendants from uncertainty regarding potential litigation.

The balance between the availability of redress for victims and the blocking of stale claims 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; 10 years for past due child support; three years for wrongful death; and no limit for actions brought for the benefit of the state.

Certain actions allow for a rule of "discovery" when determining when the statute of limitations begins running. 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, current law sets the statute of limitations for civil actions for damages at the later of three dates:

1. Three years from the commission of the act;
2. Three years from the time the victim discovered or reasonably should have discovered the injury or the condition was caused by the sexual abuse; or
3. Three years from the time that the victim discovered or reasonably should have discovered that the act caused the injury for which the claim is brought.

None of these periods begins until a child turns 18, and claims may be brought by either the child or the child's parents.

When interpreting the limitations on actions, courts read the provision as causing the statute of limitations to begin 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, multiple personalities, 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 sexual abuse is a pervasive problem in our society; 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 determined that this section applies to claims against the perpetrator of sexual abuse, as well as claims of negligence against parties who failed to protect the

child, such as schools, churches, parents, and others having a special relationship with the child.

Summary of Substitute Bill:

Civil actions based on childhood sexual abuse must be brought within 10 years after the commission of the act, the time the victim discovered or reasonably should have discovered the injury or the condition was caused by the sexual abuse, or the time that the victim discovered or reasonably should have discovered that the act caused the injury for which the claim is brought.

The 10-year limit applies to claims arising on or after the effective date, as well as claims that are not time-barred as of the effective date.

Substitute Bill Compared to Original Bill:

The substitute bill does not eliminate the statute of limitations for civil suits based on childhood sexual abuse. The substitute bill extends the limit from three to 10 years for claims arising on or after the effective date of the act, as well as claims not already time-barred as of the effective date of the act.

The substitute bill adds an emergency clause.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Sexual abuse is widespread, and the effects of abuse don't end. This bill puts potential defendants on notice that abuse won't be tolerated. People should pay for what they have done. We shouldn't let people get away with abuse just because no one finds out for years. The bill should be applied to pending claims, and should be retroactive. Without retroactivity, the Legislature is condoning abuse, and victims will have no resolution. A large number of people have claims that are barred by the current statute of limitations; their voices are silenced by the law. These crimes don't disappear; the experience of victims is the same before and after the statute of limitations expires. Victims have various reasons for waiting to file claims; they shouldn't be subject to the arbitrary line of the statute of limitations. Victims might not be able to deal with abuse until much later in life. Some victims have extensive memory loss. Retroactivity is needed even if it has a financial impact on institutions, although states that have lifted the

statute of limitations have not seen institutions crumble. Institutions try to wait out the clock on the statute of limitations. The Catholic church has enough resources to pay these costs, and shouldn't be above the law. The church covered up abuse, and abuse reported within the church has been blown off by church leadership. The church cannot be relied on to fix this problem. Ninety percent of abuse victims don't sue, therefore retroactive application would not "open the floodgates" on litigation. Insurance doesn't pay for counseling for some victims. Perpetrators do not get better. Statutes of limitations should be lifted across the entire United States. Thirty-four percent of women in Washington have experienced sexual violence. Abuse affects Native Americans. The high public profile of this issue provides a good opportunity for change and prevention of future abuse. Action is needed now to break the cycle of abuse.

(Neutral) Retroactive application would have an impact on the costs of insurance. Some of the policies covering those sued have been closed.

Testimony Against: None.

Testified: (In support) Representative O'Brien, prime sponsor; David Clohessy, Douglas Hamlin, Michael Ross, Mary Engley, Scott Brady, Bill Crane, Tommy Crane, and Debbie LaCroix PhD., Survivor's Network Abused by Priests; Suzanne Brown, Washington Coalition of Sexual Assault Programs; Tom Stewart, Boy Scouts of America; Grace Simmons; Dorothy Graham; Marilyn McEvoy; Mike Bordwell; Michael Grady; and John Shuster.

(Neutral) Basil Badley, American Insurance Association.