

Suggested allocation: s.2: C.2A:14-2a; s.7: C.59:2-1.3;
and ss.9 and 10: C.2A:14-2b and 2A:14-2c & Note to
ss. 1 through 9 to 2019/37

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 477

STATE OF NEW JERSEY

**Sponsored by Senators VITALE and SCUTARI, and
Co-sponsored by Senators Weinberg, Cryan, Codey, Cunningham, Diegnan, Gill,
Gopal, Greenstein, Lagana, O'Scanlon, Rice, Ruiz, B.Smith, Stack and Turner**

AN ACT concerning certain civil actions, and amending and
supplementing various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State
of New Jersey:*

1. N.J.S.2A:14-2 is amended to read as follows:

2A:14-2. a. [Every] Except as otherwise provided by law, every
action at law for an injury to the person caused by the wrongful act,
neglect or default of any person within this State shall be
commenced within two years next after the cause of any such action
shall have accrued; except that an action by or on behalf of a minor
that has accrued for medical malpractice for injuries sustained at
birth shall be commenced prior to the minor's 13th birthday.

b. In the event that an action by or on behalf of a minor that has
accrued for medical malpractice for injuries sustained at birth is not
commenced by the minor's parent or guardian prior to the minor's
12th birthday, the minor or a person 18 years of age or older
designated by the minor to act on the minor's behalf may commence
such an action. For this purpose, the minor or designated person
may petition the court for the appointment of a guardian ad litem to
act on the minor's behalf.

(cf: P.L.2004, c.17, s.3)

2. (New section) a. (1) Every action at law for an injury resulting
from the commission of sexual assault, any other crime of a sexual

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) against a minor under the age of 18 that occurred prior to, on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be commenced within 37 years after the minor reaches the age of majority, or within seven years from the date of reasonable discovery of the injury and its causal relationship to the act, whichever date is later.

(2) To the extent applicable, any action for an injury that occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c. (C.) (pending before the Legislature as this bill).

b. (1) Every action at law for an injury resulting from the commission of sexual assault or any other crime of a sexual nature against a person 18 years of age or older that occurred prior to, on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be commenced within seven years from the date of reasonable discovery of the injury and its causal relationship to the act.

(2) To the extent applicable, any action for an injury that occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7), as amended by P.L. , c. (C.) (pending before the Legislature as this bill).

Nothing in this section is intended to preclude the court from finding that the statute of limitations was tolled in an action because of the plaintiff's mental state, physical or mental disability, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.

c. (1) Every action at law for an injury that is commenced pursuant to this section shall proceed on an individual basis, and not proceed on behalf of a class in a class action, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor under the age of 18 or a person 18 years of age or older.

(2) Any private, contractual arrangement intending to settle claims for occurrences described in paragraph (1) of this subsection

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on a class basis is against public policy and shall be void and unenforceable.

3. Section 6 of P.L.1992, c.7 (C.2A:30B-6) is amended to read as follows:

6. [Every] In any action [brought pursuant to this act] for injury based on P.L.1992, c.7 (C.2A:30B-1 et seq.), the cause of action shall [be commenced within two years after the child reaches the age of majority] accrue at the time of reasonable discovery of the injury and its causal relationship to the act. The action shall be subject to the statute of limitations set forth in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.1992, c.7, s.6)

4. Section 1 of P.L.1992, c.109 (C.2A:61B-1) is amended to read as follows:

1. a. As used in this act:

(1) "Sexual abuse" means an act of sexual contact or sexual penetration between a child under the age of 18 years and an adult. 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, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.

(2) "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of sexually arousing or sexually gratifying the actor. Sexual contact of the adult with himself must be in view of the victim whom the adult knows to be present.

(3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction.

(4) "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

(5) "Injury or illness" includes psychological injury or illness, whether or not accompanied by physical injury or illness.

b. In any civil action for injury or illness based on sexual abuse, the cause of action shall accrue at the time of reasonable discovery of the injury and its causal relationship to the act of sexual abuse. Any such action shall be [brought within two years after reasonable discovery] subject to the statute of limitations set

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forth in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

c. [Nothing in this act is intended to preclude the court from finding that the statute of limitations was tolled in a case because of the plaintiff's mental state, duress by the defendant, or any other equitable grounds. Such a finding shall be made after a plenary hearing. At the plenary hearing the court shall hear all credible evidence and the Rules of Evidence shall not apply, except for Rule 403 or a valid claim of privilege. The court may order an independent psychiatric evaluation of the plaintiff in order to assist in the determination as to whether the statute of limitations was tolled.] (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

d. (1) Evidence of the victim's previous sexual conduct shall not be admitted nor reference made to it in the presence of a jury except as provided in this subsection. When the defendant seeks to admit such evidence for any purpose, the defendant must apply for an order of the court before the trial or preliminary hearing, except that the court may allow the motion to be made during trial if the court determines that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence. After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. If the court finds that evidence offered by the defendant regarding the sexual conduct of the victim is relevant and that the probative value of the evidence offered is not outweighed by its collateral nature or by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the victim, the court shall enter an order setting forth with specificity what evidence may be introduced and the nature of the questions which shall be permitted, and the reasons why the court finds that such evidence satisfies the standards contained in this section. The defendant may then offer evidence under the order of the court.

(2) In the absence of clear and convincing proof to the contrary, evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(3) Evidence of the victim's previous sexual conduct shall not be considered relevant unless it is material to proving that the source of semen, pregnancy or disease is a person other than the defendant. For the purposes of this subsection, "sexual conduct" shall mean any conduct or behavior relating to sexual activities of the victim, including but not limited to previous or subsequent experience of sexual penetration or sexual contact, use of contraceptives, living arrangement and life style.

e. (1) The court may, on motion and after conducting a hearing in camera, order the taking of the testimony of a victim on closed

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circuit television at the trial, out of the view of the jury, defendant, or spectators upon making findings as provided in paragraph (2) of this subsection.

(2) An order under this section may be made only if the court finds that the victim is 16 years of age or younger and that there is a substantial likelihood that the victim would suffer severe emotional or mental distress if required to testify in open court. The order shall be specific as to whether the victim will testify outside the presence of spectators, the defendant, the jury, or all of them and shall be based on specific findings relating to the impact of the presence of each.

(3) A motion seeking closed circuit testimony under paragraph (1) of this subsection may be filed by:

- (a) The victim or the victim's attorney, parent or legal guardian;
- (b) The defendant or the defendant's counsel; or
- (c) The trial judge on the judge's own motion.

(4) The defendant's counsel shall be present at the taking of testimony in camera. If the defendant is not present, he and his attorney shall be able to confer privately with each other during the testimony by a separate audio system.

(5) If testimony is taken on closed circuit television pursuant to the provisions of this act, a stenographic recording of that testimony shall also be required. A typewritten transcript of that testimony shall be included in the record on appeal. The closed circuit testimony itself shall not constitute part of the record on appeal except on motion for good cause shown.

f. (1) The name, address, and identity of a victim or a defendant shall not appear on the complaint or any other public record as defined in P.L.1963, c.73 (C.47:1A-1 et seq.). In their place initials or a fictitious name shall appear.

(2) Any report, statement, photograph, court document, complaint or any other public record which states the name, address and identity of a victim shall be confidential and unavailable to the public.

(3) The information described in this subsection shall remain confidential and unavailable to the public unless the victim consents to the disclosure or if the court, after a hearing, determines that good cause exists for the disclosure. The hearing shall be held after notice has been made to the victim and to the defendant and the defendant's counsel.

(4) Nothing contained herein shall prohibit the court from imposing further restrictions with regard to the disclosure of the name, address, and identity of the victim when it deems it necessary to prevent trauma or stigma to the victim.

g. In accordance with R.5:3-2 of the Rules Governing the Courts of the State of New Jersey, the court may, on its own or a party's motion, direct that any proceeding or portion of a proceeding

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involving a victim sixteen years of age or younger be conducted in camera.

h. A plaintiff who prevails in a civil action pursuant to this act shall be awarded damages in the amount of \$10,000, plus reasonable attorney's fees, or actual damages, whichever is greater. Actual damages shall consist of compensatory and punitive damages and costs of suit, including reasonable attorney's fees. Compensatory damages may include, but are not limited to, damages for pain and suffering, medical expenses, emotional trauma, diminished childhood, diminished enjoyment of life, costs of counseling, and lost wages.

(cf: P.L.2004, c.130, s.10)

5. Section 1 of P.L.1959, c.90 (C.2A:53A-7) is amended to read as follows:

1. a. No nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.

Nothing in this subsection shall be deemed to grant immunity to any health care provider, in the practice of his profession, who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes.

b. No nonprofit corporation, society or association organized exclusively for hospital purposes or its trustees, directors, officers or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association; but nothing herein contained shall be deemed to exempt

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the agent, employee or servant individually from their liability for any such negligence.

c. Nothing in this section shall be deemed to grant immunity to: (1) any nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes, or its trustee, director, officer, employee, agent, servant or volunteer, causing damage by a willful, wanton or grossly negligent act of commission or omission, including sexual assault [and] any other [crimes] crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1); (2) any trustee, director, officer, employee, agent, servant or volunteer causing damage as the result of the negligent operation of a motor vehicle; or (3) an independent contractor of a nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes.

(cf: P.L.1959, c.90, s.1)

6. Section 2 of P.L.2005, c.264 (C.2A:53A-7.5) is amended to read as follows:

2. a. The provisions of this supplementary act, P.L.2005, c.264 (C.2A:53A-7.4 et seq.), shall apply prospectively and also shall be applicable to all civil actions for which the statute of limitations has not expired as of the effective date of this act, and subsequently, not expired as of the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), including the [statutes of limitation] statute of limitations set forth in N.J.S.2A:14-2, section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), [section 1 of P.L.1992, c.109 (C.2A:61B-1)] or any other statute. These applicable actions include but are not limited to matters filed with a court that have not yet been dismissed or finally adjudicated as of the effective date of this act or P.L. , c. (C.) (pending before the Legislature as this bill).

b. Notwithstanding the provisions of subsection a. of this section, the provisions of P.L.2005, c.264 (C.2A:53A-7.4 et seq.) shall apply to all civil actions for an injury resulting from an act that occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), and these actions shall be subject to the statute of limitations set forth in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2005, c.264, s.2)

7. (New section) Notwithstanding any other provision of law to the contrary, including but not limited to the "New Jersey Tort Claims Act," N.J.S.59:1-1 et seq., a public entity is liable in an action at law for an injury resulting from the commission of sexual

assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1).

8. N.J.S.59:8-3 is amended to read as follows:

59:8-3. Claims for damages against public entities. [No] a. Except as otherwise provided in this section, no action shall be brought against a public entity or public employee under this act unless the claim upon which it is based shall have been presented in accordance with the procedure set forth in this chapter.

b. The procedural requirements of this chapter shall not apply to an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1).

(cf: P.L.1994, c.49, s.2)

9. (New section) a. Notwithstanding the statute of limitations provisions of N.J.S.2A:14-2, section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), section 1 of P.L.1964, c.214 (C.2A:14-2.1), or any other statute, an action at law for an injury resulting from the commission of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1), that occurred prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), and which action would otherwise be barred through application of the statute of limitations, may be commenced within two years immediately following the effective date.

b. To the extent applicable, any action brought during the two-year period pursuant to subsection a. of this section shall be subject to the provisions of subsection c. of section 1 of P.L.1959, c.90 (C.2A:53A-7) and P.L.2005, c.264 (C.2A:53A-7.4 et seq.), as amended by P.L. , c. (C.) (pending before the Legislature as this bill).

c. (1) Every action at law for an injury that is commenced pursuant to this section shall proceed on an individual basis, and not proceed on behalf of a class in a class action, due to the particular circumstances, source of injury and its discovery, and damages relating to each occurrence or occurrences of sexual assault, any other crime of a sexual nature, a prohibited sexual act as defined in section 2 of P.L.1992, c.7 (C.2A:30B-2), or sexual abuse as defined in section 1 of P.L.1992, c.109 (C.2A:61B-1) against either a minor under the age of 18 or a person 18 years of age or older.

(2) Any private, contractual arrangement intending to settle claims for occurrences described in paragraph (1) of this subsection

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on a class basis is against public policy and shall be void and unenforceable.

10. (New section) The provisions of this amendatory and supplementary act, P.L. , c. (C.) (pending before the Legislature as this bill), shall take effect on December 1, 2019. These provisions shall be inapplicable to any civil action governed solely by the statute of limitations of another jurisdiction.

Extends statute of limitations in civil actions for sexual abuse claims; expands categories of potential defendants in civil actions; creates two-year window for parties to bring previously time-barred actions based on sexual abuse.

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