



## **Justice for child sexual abuse victims in jeopardy as PA legislative session set to close**

*In twist of irony, supporters and opponents of statute of limitation reform may be united to kill reforms before November 30th*

**September 20<sup>th</sup>** -- In 71 days, Pennsylvania's two-year legislative session concludes.

After November 30<sup>th</sup>, any legislative bill not already on Governor Tom Wolf's desk, becomes obsolete unless the bill is reintroduced and is able to survive the legislative process. The next two-year PA legislative cycle begins in January 2017 and will conclude in November 2018.

As of today, more than 3,500 bills have been introduced by Pennsylvania lawmakers in the 2015-2016 session. Another thousand plus resolutions have also been introduced. From that massive amount of proposed bills fewer than 200 bills have been signed into law (just over a 100 bills were enacted thus far in 2016<sup>1</sup> and less than 100 bills were enacted in 2015<sup>2</sup>).

The final days of any two-year legislative cycle are filled with rumors, fast moving parts, massive (often secretive) deal making, and legislative drafting mistakes ripe with unintended consequences.

An added complication is that lawmakers really have their full attention focused on the pace and stakes of the election cycle (remember half of the Pennsylvania Senate is up for re-election as well as all 203 seats in the Pennsylvania House of Representatives). There are precious few legislative session days between September and November 30<sup>th</sup>. At the moment, the PA House is scheduled for 13 legislative session days, the PA Senate just 10.

This year the final days of the legislative session will also ensure there is a recurrent theme about addressing the heroin and prescription opioid epidemic gripping the Commonwealth. Governor Wolf and legislative leaders have opted against a special session (citing the time lag in circulating co-sponsorship memos and moving bills through the legislative process). Instead Wolf will address a joint session (similar to what is done at budget time) rallying legislative leaders to work with him to pass legislation that recognizes the opioid epidemic "is a top priority" this fall.<sup>3</sup> Hopefully that "top priority"

<sup>1</sup> [http://www.legis.state.pa.us/cfdocs/legis/CL/Public/cl\\_view\\_action2.cfm?sess\\_yr=2016&sess\\_ind=0&cl\\_typ=GA&cl\\_nbr=](http://www.legis.state.pa.us/cfdocs/legis/CL/Public/cl_view_action2.cfm?sess_yr=2016&sess_ind=0&cl_typ=GA&cl_nbr=)

<sup>2</sup> [http://www.legis.state.pa.us/cfdocs/legis/CL/Public/cl\\_view\\_action2.cfm?sess\\_yr=2015&sess\\_ind=0&cl\\_typ=GA&cl\\_nbr=](http://www.legis.state.pa.us/cfdocs/legis/CL/Public/cl_view_action2.cfm?sess_yr=2015&sess_ind=0&cl_typ=GA&cl_nbr=)

<sup>3</sup> <https://www.governor.pa.gov/why-governor-tom-wolf-called-a-joint-session-to-address-the-opioid-epidemic/>

remains beyond November 30<sup>th</sup> since there is well so few days to act with intention on a crisis that has proved indiscriminate and unrelenting with direct impact on infants and children.

Beyond solutions for the opioid epidemic, lawmakers are still pretty invested in seeing if there is a path forward of expanding gaming and reforming public pensions before that magical moment on November 30<sup>th</sup>.

With the clock ticking and the politics ratcheting up, survivors of child sexual abuse and advocates for these victims are growing quite concerned about the fate of House Bill 1947 – legislation to reform the civil and criminal statute of limitations (SOL) in child sexual abuse cases.

As it stands today, overwhelming majorities in the Pennsylvania House and Senate have voted for reforms. In the House this past April it was 180 state representatives approving House Bill 1947. Then in June the bill passed the Senate unanimously.

The challenge is that the two legislative chambers passed two different versions of House Bill 1947 (see chart below). Still, both chambers are on the record (overwhelmingly) in support of:

- Eliminating the criminal statute of limitation in most sexually-based crimes against children;
- Extending (at a minimum to age 50) the civil statute of limitation so that a person sexually abused as a child has a longer time period to get into court and file a civil claim against their perpetrator(s); and
- Waiving existing immunity protections giving an advantage to the public sector and government in cases of child sexual abuse.

Think about that 180 of 203 members in the Pennsylvania House of Representatives and 49 out of 50 Pennsylvania senators supported these provisions.

Still, today, it is very likely that the Pennsylvania General Assembly will stall (again) in providing a tangible path for justice and healing for the child being sexually assaulted today and for the child who will be assaulted tomorrow and in the days to come.

The legislative death of House Bill 1947 would arrive as the media is reporting and many Roman Catholic dioceses in the Commonwealth have confirmed that a majority (6 of the 8) of the dioceses are being scrutinized by a grand jury convened by Pennsylvania's Office of Attorney General (OAG).<sup>4</sup> A growing list of adult survivors of child sexual abuse are acknowledging they have welcomed the chance to appear before the grand jury even as the OAG has not commented on any existing grand jury.

This critical undertaking by the OAG is impressive in that it demonstrates a systematic review of decisions made not just by one person in one diocese, but has the potential to discover a pattern of missteps and criminal behavior.

It is also ironic in that any such grand jury may very well have their hands tied when it comes to considering any indictments against an individual(s), because of the rigid and limiting criminal SOL for sexual crimes against children.

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<sup>4</sup> <http://www.witf.org/news/2016/09/six-dioceses-now-under-investigation-in-pa.php>

It is also worth remembering that it isn't just within Catholic affiliated dioceses that investigations continue to explore the sexual abuse – often serial sexual abuse of children. A grand jury is said to be still exploring the abuse of students at the Solebury School in Bucks County. And, of course, scores of victims sexually assaulted by a person unaffiliated with high profile institutions like the Catholic Church or private schools have always faced tough odds – on both the criminal and civil front – to secure justice in a courtroom.

This week the national training conference of the National Center for Victims of Crime (NCVC) is being held in Philadelphia. [Representative Mark Rozzi \(D-Berks\)](#) – himself a survivor of child sexual abuse at the hands of a Catholic priest – will capitalize on NCVC's focus on the eye-opening movie Spotlight as he convenes a press conference in Philadelphia about House Bill 1947. As NCVC explores the “true story” behind the Oscar-winning movie about the pervasive nature of the sexual abuse and the cover up within the Boston Catholic church, Rozzi is expected to tap the voices of survivors and key parties behind the Boston Globe's investigative journalism to keep sounding an alarm about child sexual abuse.

Rozzi has been front-and-center as the media reports about the grand jury investigation that has put more Catholic dioceses in the spotlight for how they handled child sexual assault cases and the perpetrators responsible for the assaults. Rozzi has used his time in the spotlight to harshly criticize Pennsylvania Senate leaders who amended House Bill 1947 stripping the bill of a provision to give a particular class of adults, sexually assaulted as children often decades ago, their day in court to file a civil claim against their abuser(s).

Now in an ironic and painful twist, it appears Rozzi and some supporters are prepared to kill House Bill 1947 to protest the Pennsylvania Senate voting (unanimously) for a bill that denies certain adults, sexually assaulted as children, to get into civil court to name their abuser and work to break cycles of abuse (across generations often), including abuse that flourished as institutions showed total disregard for protecting children.

So how did we get to this ironic point where House Bill 1947 may be doomed and the bill's demise may well be sanctioned by a champion for child sexual abuse victims?

Pennsylvania's SOL for civil claims was last altered in 2002. Meanwhile, the last change to the criminal SOL was made through Act 179 of 2006 when the PA General Assembly extended (going forward) the criminal SOL until the person (sexually assaulted as a child) reached the age of 50.

The decision to extend versus eliminate the criminal SOL in 2006 overlooked the recommendations of a grand jury convened by the Philadelphia District Attorney's office investigating crimes related to the sexual abuse of children by clergy affiliated with the Archdiocese of Philadelphia. In its 2005 report, the grand jury stipulated that the criminal SOL should “be eliminated” for crimes against children that included rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault (involving a course of conduct), sexual exploitation of children. Also, endangering the welfare of children and corruption of minors, but only as it related to sexual abuse of children or exposure to sexual abuse. In making the recommendation, the Grand Jury stressed, “It is time to stop giving a pass to child abusers who count on the statute of limitations and the fears and immaturity of their victims to avoid criminal liability.”<sup>5</sup>

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<sup>5</sup>Report of the County Investigating Grand Jury (MISC. NO. 03-00-239), Page 70.

Then in 2011, a second investigating grand jury also convened by the Philadelphia District Attorney called on the Pennsylvania General Assembly “to abolish” the criminal SOLs for sexual crimes against children. The Grand Jury emphasized, “We see no reason that sexual predators should benefit because they choose vulnerable young victims who are unable to come forward for many years.”<sup>6</sup>

Fast forward to 2016 and a third grand jury, this time linked to abuse by individuals associated with The Roman Catholic Diocese of Altoona-Johnstown, also urged state lawmakers to abolish the criminal SOL.

Three separate and powerful grand jury reports have surfaced over the last decade alongside daily news reports underscoring how often the criminal SOL proves an impediment to pursuing criminal charges against a person(s) who sexually assault a child. Still as November 30<sup>th</sup> fast approaches, it seems once again momentum is shifting away from finally eliminating the criminal SOL in Pennsylvania.

The fate of where to next on the criminal SOL is directly influenced by controversy on the civil side of the equation most notably which adults (if any) - sexually abused as a child in the 1990s, 1980s, 1970s and earlier - will get a chance to pursue justice in a civil courtroom.

In 2005 and 2011, the grand jury reports mentioned earlier also called for reform to the civil SOLs. In 2005, the grand jury recommended that lawmakers “enlarge or eliminate statutes of limitation on civil suits.<sup>7</sup> Then in 2011 the grand jury recommended that the Pennsylvania General Assembly “suspend for two years the civil statute of limitations on sexual abuse claims” toward providing a “window of opportunity” that would permit adults who were victims of child sexual abuse “to have their cases heard in a court of law.”<sup>8</sup> The most recent grand jury report stemming from abuse in the Altoona-Johnstown Diocese included just three recommendations. Among them: Open a window to allow child sexual abuse victims to have their civil actions heard. This grand jury specifically recommended that there be a “designated and finite period of years” by which victims, previously barred from bringing a civil action, can file such a claim.

Many victims of child sexual abuse, including those assaulted before 2002, found that the civil clock generally expired just two years after they turned 18. This abbreviated civil SOL has been demonstrated to have provided insufficient time to unpack the abuse experienced, often at the hands of someone they depended on for basic life supports, and to have the means – emotionally and financially – to pursue a civil claim against their perpetrator.

In 2002, the Pennsylvania General Assembly gave victims of child sexual abuse more time to file a civil claim –keeping the clock ticking until the survivor reached their 30<sup>th</sup> birthday. There was no retroactive provision added in 2002.

As introduced, House Bill 1947 provided a step forward opening the door to civil courtrooms until the child victim turns 50.

While widely praised, this step forward was equally met with frustration because House Bill 1947 included no retroactive provision. In other words, the person assaulted as a child in the 1990s, 1980s, 1970s or earlier still was without a recourse in either a criminal or civil courtroom.

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<sup>6</sup> County Investigating: Grand Jury XXIII (MISC. NO. 0009901-2008), page 122.

<sup>7</sup> Report of the County Investigating Grand Jury (MISC. NO. 03-00-239), Page 8.

<sup>8</sup> County Investigating: Grand Jury XXIII (MISC. NO. 0009901-2008), page 121.

[Representative Mark Rozzi \(D-Berks\)](#) – himself a survivor of child sexual abuse at the hands of a Catholic priest – insisted the legislation go further to bring justice and healing to adult survivors of child sexual abuse currently shut out by existing or earlier SOLs.

On April 11<sup>th</sup>, members of the PA House of Representatives listened to the impassioned plea and graphic details of sexual assaults experienced by some victims before Rozzi offered elected officials the chance to support his [amendment #6694](#). Rozzi’s amendment quite simple added language to stipulate that the civil provisions (the ability to bring a civil suit until the child victim reached the age of 50) be applied retroactively.

The language simple; the implications (and lobbying forces against) quite significant.

Rozzi’s amendment, which was going to be difficult to defeat in the shadow of jarring words about anal rape and other assaults against children, was approved by the House of Representatives with a vote of 166 to 28. Nine members of the House did not cast a vote.<sup>9</sup>

Even with a retroactive provision – a provision opposed by the PA Catholic Conference and The Insurance Federation of Pennsylvania – House Bill 1947 won the overwhelming support of 180 members of the PA House. Still the debate also demonstrated that some casting yes votes saw challenges in the retroactive language and some other elements of the bill and so their yes vote came along with a suggestion to secure improvements in the Senate.

Some PA House members paid a price for that yes vote facing scorn and public shaming back home, including in their own Catholic houses of worship. That scrutiny fired up Rozzi and state representatives, who were a yes vote on House Bill 1947. Frustration about how members were treated back home by Catholic leaders hasn’t evaporated and continues to influence the emotionally-charged approach to House Bill 1947.

This summer then the Pennsylvania Senate took the House-passed bill and subjected it to a public hearing to explore whether a retroactively applied civil SOL provision was constitutional. The public hearing proved lopsided in terms of the positions of those testifying (weighted toward those making the case why the bill was unconstitutional). The hearing was also convoluted as senators attempted to sort through conflicting signals from PA’s Office of Attorney General. In one way the OAG pushed the legislature to move legislation, including with retroactive civil elements, but then the OAG testified that such a provision would be unconstitutional based on the remedies clause in the state constitution.

Mixed messages and enough confusion shrouded in debates about constitutional challenges propelled Senate leaders (some with good intentions others beholden to lobbyists) to strip the retroactive civil SOL provisions out of House Bill 1947.

In another twist or irony, as the Senate amendment stripped away that key retroactive provision it took a step further (going forward not retroactively) to provide an “unlimited period of time” for a victim to file a civil claim against their abuser and other individuals who “conspired” with the person to commit the abuse or any person who “had knowledge” about the abuse and did not then notify law enforcement or a county children and youth agency.<sup>10</sup> The Senate amendment also changed the House’s sovereign and government immunity provisions to lower the bar from gross negligence to negligence.

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<sup>9</sup>[http://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc\\_view\\_action2.cfm?sess\\_yr=2015&sess\\_ind=0&rc\\_body=H&rc\\_nbr=1291](http://www.legis.state.pa.us/CFDOCS/Legis/RC/Public/rc_view_action2.cfm?sess_yr=2015&sess_ind=0&rc_body=H&rc_nbr=1291)

<sup>10</sup> <http://www.legis.state.pa.us/WU01/LI/BI/SFN/2015/0/HB1947P3667.pdf>

The Senate’s actions have created a conundrum, especially in light of how very few legislative days remain before House Bill 1947 and any effort to improve PA’s child sexual abuse SOLS become obsolete come November 30<sup>th</sup>.

What happens next is anyone’s guess, but so far the decade long pursuit of enhanced legal protections for child victims bears so much resemblance to the actual sexual abuse of a child - ugly, manipulative and deeply wounding.

<b>CONTENT AREA</b>	<b>HOUSE APPROVED</b> <a href="#"><u>House Bill 1947 (Printer's # 3163)</u></a>	<b>SENATE APPROVED</b> <a href="#"><u>House Bill (Printer's #3667)</u></a>
<b>Preamble or “Findings” of the General Assembly</b>	None	<ol style="list-style-type: none"> <li>1. “The remedies clause found in Section 11 of Article I of the constitution of Pennsylvania has been interpreted by the Pennsylvania Supreme Court to provide a constitutional guarantee of access to legal remedies and defenses.</li> <li>2. The Pennsylvania Supreme Court has interpreted the remedies clause as providing a vested right to accrued defenses that cannot be infringed upon by subsequent law.</li> <li>3. Pursuant to the interpretation by the Pennsylvania Supreme Court, the General Assembly is constitutionally precluded from adopting any retroactive changes extending a statute of limitations or invalidating a defense based on a statute of limitations that has already expired as against any particular defendant.</li> <li>4. Statutes of limitation recognize that the right to assert a cause of action and the right to assert a defense to that action are on an equal footing in this Commonwealth.</li> <li>5. Statutes of limitation promote diligence and repose, diminish uncertainty and allow every person to allocate resources appropriately.</li> <li>6. Statutes of limitation promote accurate fact-finding in litigation, as evidence and testimony become degraded or unavailable over time.</li> <li>7. Therefore, it is the intent of the General Assembly to eliminate statute of limitations only in rare circumstances in which delayed discovery of the cause of action is particularly likely and the right to defend against the claim is not significantly undermined.”</li> </ol>
<b>Civil - Eliminated</b> § 5533. Infancy, insanity or	None	If an individual entitled to bring a civil action arising from childhood sexual abuse is under 18 years of age at the time the cause of action accrues, the individual shall have an unlimited

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imprisonment. (Title 42)		<p>period of time to commence an action for damages against the following individuals:</p> <ol style="list-style-type: none"> <li>I. The individual who committed the act of childhood sexual abuse.</li> <li>II. Any individual who conspired with the individual who committed the act of childhood sexual abuse for the purpose of bringing about the abuse.</li> <li>III. Any individual who, having actual knowledge of the childhood sexual abuse perpetrated against the individual, failed to prevent any subsequent childhood sexual abuse by the same perpetrator against the same individual by reporting the abuse to law enforcement officials or to a state or county child protective services agency during the victim's minority. No cause of action shall accrue under this subparagraph against any individual who was aware that a report of the childhood sexual abuse had already been made by another individual or entity to law enforcement officials or to a state or county child protective services agency." </li> </ol>
<b>Civil - Extended</b> § 5533. Infancy, insanity or imprisonment. (Title 42)	Extended for 32 years after "attaining 18 years of age"	Eliminates SOL in certain circumstances (see above), in all other circumstances civil SOL would be extended for 32 years after "attaining 18 years of age"
<b>Criminal - Eliminated</b> § 5551. No limitation applicable (Title 42)	<p>An offense under any of the following provisions of 18 Pa.C.S. (relating to crimes and offenses) if the victim was under 18 years of age at the time of the offense:</p> <ul style="list-style-type: none"> <li>• Trafficking in individuals (Section 3011b)</li> <li>• Involuntary servitude as it relates to sexual servitude (Section 3012)</li> <li>• Rape (Section 3121)</li> <li>• Statutory Sexual Assault (Section 3122.1)</li> <li>• Involuntary deviate sexual intercourse (Section 3123)</li> <li>• Sexual assault (Section 3124.1)</li> <li>• Institutional sexual assault (Section 3124.2)</li> <li>• Aggravated indecent assault (Section 3125)</li> </ul> <p>Incest (Section 4302)</p>	<p>Follows PA House direction, but also includes "<b>conspiracy or solicitation to commit an offense under any of the following provisions of 18 PA.C.S. If the offense is facilitated by the conspiracy or solicitation</b>, if the victim was under 18 years of age at the time of the offense:</p> <ul style="list-style-type: none"> <li>• Trafficking in individuals (Section 3011b)</li> <li>• Involuntary servitude as it relates to sexual servitude (Section 3012)</li> <li>• Rape (Section 3121)</li> <li>• Statutory Sexual Assault (Section 3122.1)</li> <li>• Involuntary deviate sexual intercourse (Section 3123)</li> <li>• Sexual assault (Section 3124.1)</li> <li>• Institutional sexual assault (Section 3124.2)</li> <li>• Aggravated indecent assault (Section 3125)</li> </ul>

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<b>Criminal – Extended</b> § 5552. Other offenses	Adds Institutional sexual assault to the list of crimes where there is a 12 year statute of limitation from when the offense was “committed.”	<ul style="list-style-type: none"> <li>• Incest (Section 4302)</li> </ul> <p style="text-align: center;">Same as PA House</p>
<b>§ 8522. Exceptions to sovereign immunity</b>	Adds to the existing list: “(10) Sexual abuse- Conduct which constitutes an offense enumerated under section 5551 (7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the Commonwealth which constitute gross negligence. Sovereign immunity may be raised to the extent the actions or omissions of the Commonwealth constitute negligence.”	Adds to the existing list: “(10) Sexual abuse- Conduct which constitutes an offense enumerated under section 5551 (7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the Commonwealth which constitute negligence.  <b>NOTE:</b> The PA Senate advanced a lower threshold for conduct to negligence vs. gross negligence.
<b>§ 8542. Exceptions to governmental immunity</b>	Adds to the existing list: “(9) Sexual abuse. -- Conduct which constitutes an offense enumerated under section 5551 (7) (relating to no limitation applicable) if the claimant establishes that: i. The local agency acted in a grossly negligent manner; and ii. The action under subparagraph (i) caused injury to the claimant.”	Adds to the existing list: “(9) Sexual abuse. -- Conduct which constitutes an offense enumerated under section 5551 (7) (relating to no limitation applicable) if the claimant establishes that: i. The local agency acted in a negligent manner; and ii. The action under subparagraph (i) caused injury to the claimant.”  <b>NOTE:</b> The PA Senate advanced a lower threshold for conduct to negligent vs. grossly negligent.
<b>Retroactive – Civil</b>	“The amendment of 42 PA.C.S. § 5533(B)(2)(I) shall be applied retroactively, including to revive an action which was barred by a statute of limitations prior to the effective date of this section.”	None
<b>Effective date</b>	60 days	Immediately
<b>Fiscal note</b>	“The extension of the statute of limitations for criminal prosecutions of certain sexual offenses provided for in this legislation could have a fiscal impact on the Commonwealth by increasing the number of people convicted and sentenced for these crimes, but it is not possible to estimate those future costs at this time.  In addition, enactment of this legislation could have a fiscal impact on Commonwealth and local governments by exposing them to civil lawsuits concerning child sexual abuse that are currently barred based on sovereign immunity. However, this would depend on the number of	“The abolishment of the statute of limitations for criminal prosecutions of human trafficking and certain sexual offenses provided for in this legislation may have a minor fiscal impact on the Commonwealth if District Attorneys pursue additional prosecutions that would have been affected by a statute of limitations and if the prosecution results in a defendant being sentenced to a State Correctional Institution.” Also included this estimate based on an “assumed model” of prosecutions, incarceration “The total cost under this assumed model is estimated at \$4,475,000 over the ten-year period.” <a href="http://www.legis.state.pa.us/WU01/LI/BI/SFN/2015/0/HB1947P3667.pdf">http://www.legis.state.pa.us/WU01/LI/BI/SFN/2015/0/HB1947P3667.pdf</a>



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	suits that result in damages, and the size of those damage awards, both of which are impossible to predict at this time." <a href="http://www.legis.state.pa.us/WU01/LI/BI/FN/2015/0/HB1947P3163.pdf">http://www.legis.state.pa.us/WU01/LI/BI/FN/2015/0/HB1947P3163.p df</a>	

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<sup>11</sup> <http://legal-dictionary.thefreedictionary.com/preamble>