The Hidden Predator Act in Georgia

Time-Barred Sexual Abuse Cases Given New Life

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What is the time limit for bringing a sexual abuse civil lawsuit in Georgia?
How does the Act impact an otherwise time-barred case against an abuser?
How does the Act impact an otherwise time-barred case against an organization?

Many states recognize the tension created between two significant state interests: time limits on bringing a civil lawsuit (statutes of limitations) versus the ability of a sexual abuse victim to pursue justice through the civil courts system.

Statutes of Limitations

Statutes of limitations are laws passed to set the maximum time after an event within which legal proceedings must be initiated. When the period of time specified in a statute of limitations passes, a lawsuit can no longer be filed—it is 'time-barred'. The purpose of a statute of limitations is to facilitate resolution of claims in a reasonable length of time, before evidence becomes 'stale' and less subject to validation. With respect to injury claims involving negligence (car accident, slip-and-fall, etc.), the statute of limitations in most states is two (2) years from the time of the event; this is commonly referred to as a '2 Year Statute'. Otherwise, statutes of limitations vary depending on the state and the type of claim. When the person injured is a minor, the time period is normally tolled, the clock 'stops ticking', until the injured minor reaches majority (18 years of age) – then the prescribed time period begins to run. For a basic injury lawsuit involving a minor, the lawsuit must be filed, therefore, before the injured person reaches his or her twentieth birthday.

Child Sexual Abuse

In most circumstances resulting in an injury, a two-year period of time within which to bring a claim is reasonable. In the instance of child sexual abuse, however, statutes of limitations commonly work to exclude victims from the civil justice system. To understand this reality, one must understand the basic dynamics of the 'grooming process' utilized by the abuser, and the emotional and psychological impact of sexual abuse on the victim. Though each child is unique, research consistently indicates that the majority of abuse victims are not prepared or able to talk about the abuse they have suffered shortly after

reaching majority. In response to sexual abuse experienced in childhood, 'avoidance coping'—simply working to avoid any circumstances, conversations or 'triggers' that revisit painful memories—serves as a frequently used strategy by both male and female victims. Typically, the more painful the memory, the stronger and longer 'avoidance coping' is utilized. As a result, the civil courts are often unavailable to the children suffering the most traumatic injuries. In general, an abuse survivor who has recently reached majority is unlikely to understand the damages he or she has suffered, engage legal counsel and participate in the civil litigation process.

Legislative Responses

Many lawmakers understand this tension and have introduced legislation to 'open the civil courts' to sexual abuse victims. As a result, statutes of limitations in many states have been expanded to accommodate the realities common to child sexual abuse. Connecticut, for example, has a '30 Year Statute'; a sexual abuse victim must file a lawsuit within thirty years of reaching majority (prior to his or her 48th birthday). In California, a sexual abuse victim must file a lawsuit within eight years of reaching majority (an '8 Year Statute'). In addition to expanded time periods, some state legislatures have opened other factual and evidentiary circumstances creating access to civil courts by relying on the 'discovery rule'.

Discovery Rule

The purpose of the discovery rule is to accommodate an injury victim who did not 'discover' his or her injury within the specified amount of time allowed within which to file a lawsuit. For example, a heart surgery patient learns in an X-ray several years later that a medical instrument was accidentally left in his chest cavity during the original medical procedure. The patient did not 'discover' his injury until after the statute of limitations had expired, because the medical procedure revealing the existence of the medical instrument did not occur until after the limitations period. In this circumstance, the patient has a period of time (either specified by law or within a 'reasonable' period of time) after discovery within which to initiate a civil action, or 'file a lawsuit'.

Discovery rules vary from state to state and for different types of injuries. In sexual abuse cases, the discovery rule provisions customarily accommodate two scenarios. First, a person discovers the abuse; the abuse victim subsequently remembers the abuse or the identity of the abuser. Second (and more commonly), the abuse victim discovers the relationship between his or her injury and the abusive behavior. For example, the abuse victim, typically through counseling, comes to understands that his or her drug and alcohol abuse or PTSD is related to childhood sexual abuse suffered many years earlier.

Challenges to Change

Many lawmakers are in favor of legislative changes opening civil courts to sexual abuse victims. At the same time, there is great resistance to this type of legislation in some states. It is difficult to understand this resistance without a better understanding of the nature of the sexual abuse lawsuit, including who (or what) is named as 'defendant', and the primary object of the suit: a resolution involving a financial award—MONEY.

Few object to allowing an abuse victim endless opportunity to sue the *actual abuser*.

Because most abusers lack financial resources to satisfy a judgment, the *abuser* is rarely the target of a civil lawsuit. Attorneys representing abuse victims are typically evaluating the facts to find a defendant with resources (or insurance coverage) that has a responsibility to protect the victimized child, and the defendant was negligent (or gross negligent) in the discharge of that responsibility. Entities commonly named as a defendant in a sexual abuse lawsuit include churches, camps, schools, day care centers, youth sport programs, and other organizations providing services to children.

Given this dynamic, the legislation's greatest impact falls on insurance companies, religious organizations or denominations, and others called upon to pay settlements or satisfy judgments stemming from sexual abuse lawsuits. As a result, lobbies representing religious organizations and insurance companies work hard to discourage legislative change that may revive otherwise time-barred cases.

Changes in state law, therefore, are generally enacted after balancing the interests of abuse survivors and those expecting to be financially impacted by the change. In 2010, the Florida legislature made a significant change in its statute of limitation for sexual abuse civil lawsuits. Through House Bill 525, Florida lawmakers lifted the civil statute of limitation in Florida *completely*. In Florida, there is *no deadline* for filing a sexual abuse lawsuit if the abuse victim was under the age of 22 as of July 1, 2010. HB525 did NOT revive cases time-barred as of July 1, 2010. In other words, the legislative change was *prospective* but not *retroactive*. Retroactive change—reviving time-barred cases—would create a tremendous financial impact on insurance companies and others. By making the changes *prospective*, Florida insurance companies were able to adjust premiums or policy terms to accommodate the business environment created by legislative change.

Changes in Georgia Law—The Hidden Predator Act

The original bill submitted to the Georgia legislature for consideration called for sweeping changes. The version of the bill actually signed by the Governor on May 5, 2015 was much less comprehensive. The existing Georgia statute of limitations for sexual abuse required that all claims be filed before a victim reaches his or her 23rd birthday (a '5 Year Statute'). This is not new law; Georgia had a 5 Year Statute prior to the passage of HB17.

What did HB17 change? In reality, relatively little. The abuse survivor benefits from two changes in the law:

(1) the enactment of a discovery rule; and
(2) a two-year revival window of all sexual abuse claims filed *against the abuser*.

Discovery Rule

If a sexual abuse victim desires to hold an entity or organization responsible for sexual abuse (i.e., failure to train, screen, supervise, or negligent retention) and the claim is otherwise time-barred, the abuse victim must rely on the newly-enacted discovery rule in subsection (b)(2)(A)(i) and (c)(3). For the newly minted discovery rule to benefit the abuse survivor, the facts and process would occur thus:

> -The sexual abuse survivor (23+ years of age) has 'recovered' memories of sexual abuse or the identity of the abuser, or discovered that a particular condition or injury is related to the sexual abuse suffered.
>
> -Within two years, the abuse survivor files suit against an entity or organization he or she seeks to hold responsible for the occurrence of sexual abuse.
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> -An evidentiary hearing occurs within six (6) months of filing suit to determine whether admissible evidence supports the abuse survivor's allegation that he or she 'discovered' the abuse or the relationship of an injury to the abuse within the two-year time period allowed.
>
> -If the abuse survivor satisfies the court that he or she 'discovered' the abuse within the two-year time period, the case can move forward against an entity or organization. The success of the abuse survivor's claim now depends on proving with a 'preponderance of the evidence' ('more likely than not') that the entity or organization was ***grossly negligent***.
> [Note that *gross negligence* requires a *much* higher threshold of 'bad behavior' than simple negligence. A finding of *negligence* indicates a simple failure to act reasonably when one had a duty to do so. This could include an argument that an entity had ineffective policies or failed to properly train its staff members.
> Gross negligence, as defined by subsection (c)(3), requires proof that the entity or organization "knew or should have known of the alleged conduct giving rise to the civil action **and** such entity failed to take remedial action." (*Emphasis added.)*]

Discovery rules are valuable and necessary. The newly enacted discovery rule in Georgia has limited application, however, allowing abuse survivors to hold a person or entity *other than the abuser* responsible for abuse only in circumstances where the facts indicate *gross negligence* existed.

Two-Year Revival Window to *Sue the Abuser*

The two-year revival window in Georgia HB17 allows a sexual abuse victim (with an otherwise time-barred claim) to file a lawsuit within a two-year window beginning July 1, 2015. Specifically, subsection (d)(1) allows an abuse victim over 23 years of age to file a civil action for injuries resulting from childhood sexual abuse "against the individual alleged to have committed such abuse before July 1, 2017, thereby reviving those civil actions which had lapsed or technically expired under the law in effect on June 30, 2015."

If the abuse survivor desires to sue his or her abuser, access to the civil courts has been reopened. This two-year revival window, however, does NOT reopen the civil courts to sue an entity or organization the abuse victim seeks to hold responsible for giving the abuser access to abuse.

Summary

Though changes in Georgia law were not as dramatic as those implemented in states such as Connecticut and Florida, these changes opened Georgia civil courts to sexual abuse survivors in several limited contexts.

Love & Norris, Attorneys at Law

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, Love & Norris provide consulting services to secular and ministry organizations providing services to children. Representative clients include the United States Olympic Committee, Awana International, Church of the Nazarene, the North Texas Conference of the United Methodist Church, Gladney Center for Adoption, and many church and para-church schools, camps and ministries.

MinistrySafe and Abuse Prevention Systems

In addition to an active law practice, Love and Norris are co-founders and Directors of **MinistrySafe** and **Abuse Prevention Systems**, entities dedicated to sexual abuse awareness and prevention**. MinistrySafe** and **Abuse Prevention Systems** provide Sexual Abuse Awareness Training (live and online) and assist child-serving organizations in the design and implementation of safety systems that reduce the risk of child sexual abuse. Love and Norris are frequent speakers before ministries, educational entities, adoption and foster care organizations, and youth camps. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administrators (NACBA), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

MinistrySafe and Abuse Prevention Systems are endorsed by Philadelphia Insurance Companies and the American Camp Association. MinistrySafe and Abuse Prevention Systems' Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).