

# BOND

## LITIGATION INFORMATION MEMO

FEBRUARY 15, 2023

### “Remedying Injustice”:

## Fourth Department Holds that the Child Victims Act Comports with the New York State Due Process Clause

In 2019, former Gov. Andrew Cuomo signed the New York Child Victims Act (CVA) into law. In part, the CVA created a one-year lookback window that allowed individuals who were victims of a sexual offense or act of incest prior to the age of 18 to bring a civil claim against any party whose intentional or negligent acts or omissions caused the injury, regardless of when such injury occurred. The lookback window was later extended for an additional year due to the COVID-19 pandemic.

By the time the lookback window closed in August 2021, New York Courts were flooded with more than 10,000 pending CVA cases. Many of these cases involved claims that were decades old and alleged abusers that were deceased. As a result, defendants found themselves struggling to find relevant records or evidence to defend the claims. As these cases developed, questions arose regarding whether the revival statute of the CVA comported with the requirements of the New York Due Process Clause.

On Feb. 3, 2023, the New York State Appellate Division Fourth Department answered this question in the affirmative. In *PB-36 Doe v. Niagara Falls City School District, et. al.*, plaintiff claimed that he was sexually abused by a teacher in the 1980s when he was attending the defendant school. Plaintiff's claim included allegations that the Niagara Falls City School District and LaSalle Junior High School negligently hired, retained, supervised and directed the alleged abuser. Defendants moved to dismiss plaintiff's claim, asserting in part that the CVA violated the Due Process Clause of the New York State Constitution. The New York State Supreme Court for Niagara County disagreed and denied defendants' motion insofar as it sought to dismiss the complaint on that ground.

On appeal, the Fourth Department addressed the question of whether the CVA revival statute comported with the requirements of the New York State Constitution. In New York, a claim-revival statute will satisfy the Due Process Clause if the statute was enacted: (1) as a reasonable response; and (2) to remedy an injustice.

To determine whether the CVA was enacted to remedy an injustice so as to satisfy the second prong of this test, the Fourth Department examined the legislative history of the CVA. There, the Court found that the CVA was enacted to reduce the barriers faced by survivors of sexual abuse to come forward with their claims. Specifically, the Court noted that due to mental and emotional injuries, child sexual abuse survivors often cannot disclose their abuse until later in life when the statute of limitations on their claim has already run. Given this information, the Court ultimately concluded that the CVA was properly enacted to remedy an injustice.

The Fourth Department then turned to the first prong of the standard for claim-revival statutes, namely, whether the CVA was a “reasonable response” to this injustice. The Court noted that other states have similarly opened claim-revival windows for child sexual assault survivors for periods of two years

or longer. As such, the Fourth Department found that the two-year CVA lookback window was a reasonable response to remedy the injustice to survivors that was previously imposed by a limited statute of limitations.

Based on this analysis, the Fourth Department affirmed the lower court's decision and concluded that the CVA comports with the requirements of the New York Due Process Clause.

The attorneys at Bond are monitoring developments related to the Child Victims Act and have extensive experience in handling cases of this kind. If you have any questions regarding the CVA or defense of claims brought thereunder, please reach out to [Michaela Mancini](#) or any of the experienced attorneys in Bond's [litigation practice](#).

