

# Bond

## Child Victims Act Webinar

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## Introduction of Presenters

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## Overview

On February 14, 2019, Governor Cuomo signed the Child Victims Act into law. This legislation overhauls existing New York law concerning the time in which to bring claims for alleged childhood sexual abuse. It is anticipated that this new law may spur a significant number of lawsuits against entities such as schools, churches, and youth organizations.

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## Background – Legal Landscape Prior to the New Law

- Each civil claim or criminal charge is subject to a “statute of limitations”
- A *statute of limitations* is a defined time period in which a particular claim must be brought – once the statute of limitations period expires, the claim is “time-barred” and unable to be pursued
- *Rationale*: Promote the prompt resolution of claims, and provide for fairness to defendants

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## Background – Legal Landscape Prior to the New Law (cont.)

- Criminal prosecution: Handled by law enforcement and local District Attorney.
  - Focus is on punishment / imprisonment / rehabilitation, not financial compensation to victim
- Under criminal law, various statutes of limitations
  - two to five years for most assaults and related crimes (dependent on specific facts and severity of crime)
  - The most egregious assault felonies (rape, other Class “A” felonies, etc.) have no statute of limitations

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## Background – Legal Landscape Prior to the New Law (cont.)

- Civil Claims: Litigated dispute between private parties (plaintiff and defendant), with focus on financial compensation for an alleged harm or loss.
- One (1) year statute of limitations for “intentional tort” claims – i.e. a claim for assault / battery / false imprisonment must be brought *against the alleged perpetrator of the tort* within one year of the event.

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## Background – Legal Landscape Prior to the New Law (cont.)

- Under civil law, a plaintiff has three (3) years in which to commence a lawsuit based on a negligence theory against third-parties.
  - *Primary basis* of claims against employers / supervisors / other third-parties for personal injury caused by the alleged perpetrator
  - *Elements*: Duty / breach of duty / causation / damages
  - *Common Themes on Third-party actions*:
    - “*Negligent Supervision*” of employees or volunteers
    - “*Negligent Retention*” of employees or volunteers
    - Third party allegedly “created the circumstances” for the alleged abuse

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## Background – Legal Landscape Prior to the New Law (cont.)

- Tolling: The statute of limitations is *tolled* for “infants” (*i.e.* those under age 18).
- The statute of limitations “clock” does not start to run until the potential plaintiff / claimant reaches age 18.

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## Background – Legal Landscape Prior to the New Law (cont.)

- Special Notice to Public Entities. Where the claim is against a public entity (such as a town or school district), the claimant must first provide a formal Notice of Claim within ninety (90) days after the claim arises (*i.e.* within 90 days of the event). [Gen. Ob. L. Section 50-e]
  - *Note: still the law on other tort claims!*
  - Notice of claim must be in writing, sworn to by or on behalf of claimant, providing basic pre-litigation information concerning the claim

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## Background – Legal Landscape Prior to the New Law (cont.)

### Claims against Public Entities

- Upon receipt of Notice of Claim, Respondent allowed to examine claimant *prior to lawsuit* concerning the occurrence and extent of injuries.
- Lawsuit to be commenced within one year and ninety days of the happening of the event on which the claim is based.
- Applications to file a *late* notice of claim had to be made within one year and 90 days, although they could be tolled for infancy.

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## Background – Legal Landscape Prior to the New Law (cont.)

- *The takeaway:* Claims that are not formally filed with a Court within the applicable Statute of Limitations period *are time barred*.
- Even if the event occurred as alleged, and Defendant “did it”, and Plaintiff suffered all of the injuries alleged, recovery could not be had and any court action must be dismissed.

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## Key Elements of the New Law

- An increase to the period of time during which perpetrators may be subject to criminal prosecution.
- The creation of a one-year window of opportunity in which to bring civil lawsuits for childhood sexual abuse claims that had otherwise previously expired under the prior limitations period.

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## Key Elements of the New Law (cont.)

- An increase to the period of time during which victims of childhood sexual abuse may commence a civil lawsuit, allowing such lawsuits to now be brought at any time before the victim reaches 55 years of age.
- The elimination of the normal prerequisite of a “notice of claim” for childhood sexual abuse actions against public entities.

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## Key Elements of the New Law (cont.)

- A requirement for special judicial training with respect to crimes involving the sexual abuse of minors.
- Authorization for the Office of Court Administration to create new rules and regulations for the timely adjudication of “revived” claims of childhood sexual abuse.

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## Advice to clients that may be impacted by the new law

We encourage all clients who may be impacted by this new law to take the following steps:

- Review your company's (including affiliate's) old and current **policies** to determine if they could cover **defense and/or indemnity** of these claims.
  - Claims may now be brought that involve allegations dating back several decades.
  - Archdiocese of NY has already sued more than 30 past and present insurers for coverage of suits they expect to face.

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## Advice to clients that may be impacted by the new law (cont.)

Form teams and develop a plan to respond to requests for defense and/or indemnification.

- Need coverage and defense teams.
- Educate your relevant policyholders/constituents
  - Need to take action now to be prepared for claims and questions.
  - Attorneys for claimants are ready to file as soon as the law permits.

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## Advice to clients that may be impacted by the new law (cont.)

- Identify the individuals authorized to take action in response to a claim and what their **roles/duties** are.
- Review and know your entity's document retention/destruction policies.
- Prompt engagement of counsel is essential to address all such claims and questions.

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## Potential Defenses to Claims Made Pursuant to the New Law

- Traditional defenses are still applicable (aside from Statute of Limitations) – laches, spoliation of evidence, supervening proximate cause, etc.
- The new law does not result in “automatic” liability – claims must still be proven by the plaintiff.

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## Navigating the New Court Rules

- Proposed Rules for Revived Child Victims Act claims were released for public comment in May 2019 – release of “official” rules anticipated within days.
- Highlights of Proposed Rules:
  - Each Judicial District of the state-wide Supreme Court will have a “dedicated part” to adjudicate these actions (a “CPLR 214-g Part”)
  - Each Justice, Judicial Hearing Officer and Referee to receive special training in handling of subjects related to sexual assault and the sexual abuse of minors, pursuant to a set curriculum and format.

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## Navigating the New Court Rules

- Highlights of Proposed Rules: Accelerated timeline for adjudicating Child Victims Act cases:
  - Proposed rules intended to implement the statutory mandate that “such actions be adjudicated in a timely fashion”, and provides “aspirational” target deadlines
  - Example: discovery to be concluded within 180 days of the initial preliminary conference
  - Example: trial within 60 days of filing of trial note of issue, or, if dispositive motions filed, within 60 days of dispositive motion determination

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## Summary of Bond's Services and Ways That We Can Assist Clients That Are Impacted By This New Law

- Litigation (defending against claims)

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## If you have questions, please contact us:

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