




STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: April 5, 2010

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell 
Chairperson
State Council for Persons with Disabilities

RE: H.B. 326 [Sexual Abuse by Health Care Provider]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 326 which clarifies that civil actions based on sexual abuse of a patient by a healthcare provider may be filed at any time after the commission of the abuse. This Act also creates a 2-year “look-back” provision in cases of abuse which was unknown and could not reasonably have been discovered by the patient. SCPD has the following observations.

First, there is a minor error in line 12. The word “owned” should be “owed”.

Second, as the synopsis indicates, the bill is patterned on the Child Victim’s Act, S.B. 29, which was enacted in 2007. That legislation similarly eliminated any statute of limitation against an adult for child sexual abuse and opened a 2-year window to file suit if the former statute of limitation had lapsed. Attach please find a July 10, 2009 article which provides information about that legislation which resulted in 170 lawsuits. A prominent issue under the Child Victims Act was its application to “public” entities. In 2008, the House passed H.B. 242 to clarify the Act’s application to the State and political subdivisions of the State, including school districts. The bill was never released by the Senate Executive Committee. The SCPD, as reflected in the attached June 16, 2008 memo, supported H.B. 242. Since H.B. 326 adopts the same language as the Child Victim’s Act, its application to public entities may be unclear. The sponsors may wish to clarify intent to resolve any ambiguity.

SCPD endorses the proposed legislation subject to correction of the error in line 12 and consideration of clarification of the extent of the bill's application to public entities.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb326 hcp abuse 4-5-10

REFORM THE STATUTE OF LIMITATIONS ON CHILD SEXUAL ABUSE

- HOME
- WHAT IS A STATUTE OF LIMITATIONS?
- WHAT CAN YOU DO TO HELP?
- CONTACT AN ELECTED OFFICIAL
- RESOURCES FOR REFORM
- PARTNERS FOR REFORM
- ABOUT CONTACT

In its two years, Child Victim's Act brings 170 lawsuits alleging abuse

By Beth Miller
 © 2009 The News Journal (Wilmington, Delaware)
 Original article archived at DelawareOnline.com

7-10-09

Delaware opened its courthouse doors to victims of child sexual abuse two years ago – and they came by the dozens to seek justice for offenses committed as far back as 57 years ago, and as recent as three years ago.

By Thursday, more than 140 plaintiffs had filed more than 170 civil lawsuits under the 2007 Child Victim's Act, which eliminated the civil statute of limitations for child sexual abuse and opened a two-year "window," during which cases that would have been barred by a time limit could be filed.

The window closed Thursday, two years to the day Gov. Ruth Ann Minner signed the law passed unanimously by the Legislature. The window was twice the length of a similar provision made in California courts.

The majority of cases named a Catholic priest as the perpetrator and his superiors – bishops and provincials – as accomplices who quietly moved the offender, often first to treatment facilities and then to other parishes.

The Delaware law was triggered by the scandal that emerged nationally in 2002 in the Catholic church, where the pattern of abuse and quiet transfer was exposed in a Boston Globe investigation, by the 2006 arrest of a retired Wilmington priest in Syracuse, and the subsequent response of the Catholic Diocese of Wilmington, which divulged the names of 20 diocesan priests against whom credible claims of child abuse had been made.

None of the religious orders ministering within the Diocese of Wilmington has released such a list. Instead, more than a dozen priests serving with the Oblates of St. Francis de Sales, the Norbertine Fathers and the Capuchin friars have been named in suits.

But no person or group has the corner on this sort of crime. Cases emerged against teachers in Protestant churches, public and private schools, Boy Scout leaders, neighbors and family members, a judge and a physician.

Most cases have been filed anonymously, with notations that the plaintiffs fear public humiliation when their experiences are made known.

Six plaintiffs – including the nephew of a bishop – on Thursday joined Wilmington attorneys Tom Neuberger and Tom Crumplar to publicly thank Delaware lawmakers for giving them a day in court, a way to tell their stories and what officials knew. Neuberger's firm filed about 75 percent of the cases.

Raymond Donahue, 54-year-old son of a Wilmington police captain, said he was 12 when the late Rev. Leonard Mackiewicz took him to his mother's house in Sussex County in the fall of 1967, raped him repeatedly and then performed Mass in the garage. He referred to a letter produced by the Diocese of Wilmington when it turned over Mackiewicz's personnel file. The letter was sent in May 1967 from the Rev. Edward Leinheiser, pastor of Holy Rosary parish in Claymont to then-Bishop Michael Hyle, begging the bishop to confront the priest, who was "openly defying me" by taking young boys to his rectory bedroom.

"Instead of firing Father Mackiewicz, the bishop transferred him to St. Thomas, where we met," said Donahue, who reported the assault to church officials in the 1980's and in 1994 told his story to an area newspaper. "Without our General Assembly, this secret document would have remained hidden forever. Because of our General Assembly, I have learned that I did not have to suffer and neither did so many other young boys and girls."

Mackiewicz was named by 13 plaintiffs, including three women. Former priest Francis G. DeLuca, who pleaded guilty to similar charges in Syracuse, N.Y., two years ago, has been named by 21 victims. And the Rev. Dennis Killion of the Oblates of St. Francis de Sales has been named in more than a dozen cases.

SOL Reform At-a-Glance

Access our fact sheet "Reforming Statute of Limitations on Child Sexual Abuse", by clicking the title to dispel some of the most prevalent myths on SOL reform.

Exposing the Myths

SOL reform is not directed against the Catholic Church. Click HERE to see why argument that it is.

Facts About Child Sexual Abuse

Click HERE for a compilation and examination of a number of studies regarding child sexual abuse. It is from the numbers something must be learned - SOL reform is the most effective means of finding hidden predators.

Misinformation Spreads About the NY Child Victims Act

Read our new document dispelling the unfounded claims that have been circulated against the Child Victims Act and explaining the truth about the Child Victims Act by clicking HERE.

Many church records produced already have been sealed by the courts, attorneys said. And, experts say, many other victims probably could never muster the courage to sue -- even anonymously.

"I think it is the tip of the iceberg," said Dana Harrington Conner, associate professor at Widener School of Law, who specializes in domestic violence cases. "You've got to understand -- whether it's against a priest or even more, a family member -- it's very difficult to make that choice to pursue that action."

Peterson proud of Del. law

Momentum for the Delaware law started after the scandal emerged nationally in 2002. The U.S. Conference of Catholic Bishops ordered new policies -- including the end to confidentiality agreements, stronger regulations in youth ministry, criminal background checks, and immediate removal of the accused from ministry. It also surveyed dioceses to get an accounting for what had happened. In January 2004, the Diocese of Wilmington reported complaints from about 60 people against 19 priests, covering a span of about 50 years.

The Delaware law was sponsored by state Sen. Karen Peterson, D- Stanton, with a groundswell of support from citizens and advocacy groups, including the lay Catholic group Voice of the Faithful and the Survivors Network of those Abused by Priests (SNAP).

"It was a huge accomplishment in terms of getting justice for the victims," Peterson said, "and we're one of the few states able to accomplish that."

At least 10 cases have been filed against public schools and the state, cases that will test the claim of state Rep. Greg Lavelle, R- Sharpley, that the law does not provide equal justice for victims of state employees. He plans to continue to introduce legislation to clarify that the law applies to the state, too.

The number of cases filed since the 2007 law surprised many, including Tony Flynn, attorney for the diocese, who has worked full-time on them. Based on attorneys' estimates earlier this year, the diocese expected 75 to 80 cases. Scores were filed in the last month.

"The mountain to climb now is much bigger," Flynn said.

The Rev. Kevin Nadolski, spokesman for the Oblates of St. Francis de Sales, agreed that the number of cases filed was disturbing. More than 30 have been filed against the Oblates, including two former principals of their flagship Salesianum School.

"The sheer number is gravely disappointing," Nadolski said. "Whether the allegations are true or not, one thing that is clear is that people are suffering. We have a responsibility to respond to that suffering and pain."

Nadolski said the order recognizes a need to build a culture of trust "that apparently wasn't there." And he said the priests feel "tremendously sad" that some of their brothers may have hurt children.

"It's really impressive how powerful this act is at finally getting the truth out and helping some people who got really hurt as children," said attorney Mike Reck, whose San Diego-based firm Manly & Stewart has worked with Wilmington attorney Bartholomew Dalton on about 50 cases.

Litigation has made it difficult for the diocese to deal with the victims "as victims," though, Flynn said.

"The ability of the diocese to deal with them pastorally has ended," he said. "We still are going to try to do it. A settlement is an acknowledgement of the abuse and an effort to help the victim heal by monetary compensation. But that is a one-shot deal."

Though the bishop has welcomed victims to meet with him, that hasn't happened much, Flynn said, and "that is a disappointment."

Flynn believes a one-year window would have served everyone better. Now some cases are proceeding, with the first trial dates in October, and others have been put on hold, with the hope that mediation will prevent the time and expense of full-course trials.

Neuberger says Bishop W. Francis Malooly, installed in 2008, has taken a harder stance than recently retired Bishop Michael Saltarelli. But Jeff Anderson, a Minneapolis-based attorney who has filed a couple thousand such cases nationally and more than a dozen here through Wilmington attorney Thomas Conaty, said Delaware bishops have treated plaintiffs here "with dignity. They're not going to use all the legal and unnecessary hardball tactics that might be available to them. They will defend vigorously, but nothing untoward or inappropriate."

In a recent article in the diocese's weekly newspaper, The Dialog, Malooly said diocesan officials expect settlement costs to top \$9 million.

Beyond the money, Anderson said the disclosures help to protect other children.

"The countless children whose lives have not been ruined by reason of this wise public policy is really incalculable," he said. "You don't know how many kids weren't abused. But you do know how many have come forward and now feel like they have been given some hope legally."

Peterson said she is proud of what Delaware lawmakers made possible.

"It's worth it to the families that have been destroyed by the abuse, to the family whose son committed suicide, to those who spent a lifetime of bad marriages, unemployment, drug abuse, alcohol abuse – all those things that relate directly back to the sexual abuse they suffered as children. ...

"The Child Victim's Act was the best we could do to try to help people put their lives back together."

The information contained on this site is not to be construed as legal advice and is provided for informational purposes only. While the information is intended to be accurate and up-to-date, SOL-Reform.com does not provide any warranty as to the accuracy of the contents of this site. SOL-Reform.com does not assume responsibility for actions of those in reliance on this information either implied or expressed. If you are seeking legal advice, we recommend you contact a competent, independent attorney.

MEMORANDUM

DATE: June 16, 2008

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell
Chairperson
State Council for Persons with Disabilities

RE: H.B. 242 [Child Victim Redress]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 242 which is designed to expand and clarify the availability of redress against public employees and agencies, including school districts. The bill would waive sovereign immunity and waive the protections of the State Tort Claims Act, allowing child victims of sex abuse to obtain redress from public employers. A finding of gross negligence would ostensibly still be required to impose any liability on public employers. See Title 10 Del.C. §8145(b) and H.A. 2 to H.B. 242. SCPD endorses the proposed legislation since it would provide public employers with a legal incentive to be vigilant and responsive to evidence of sex abuse of students. Moreover, sex abuse within public settings appears to be a pervasive problem justifying redress if public agencies are determined to have been grossly negligent in protecting students.

As background, in 2007, legislation (S.B. 29) was enacted which removed the statute of limitations for child victims of sexual abuse by adults. The bill also established a 2 year window after date of enactment (July 20, 2007) for victims to sue perpetrators if the pre-existing statute of limitations had already expired. Employers of perpetrators could be held liable only upon a finding of gross negligence.

As the May 28 article indicates (attached), it is anomalous for the Delaware Child Victim's Act to only apply to private entities since more (125,000+) children are subject to sex abuse within public settings. The article provides some examples of victimization within Delaware public school settings. Consistent with the attached June 10, 2002 News Journal article, sex abuse of children by public school employees has historically received "little attention beyond a few sensational cases" despite the scope of the problem. The article cites an Education Week national study which documented 244 cases of teacher-student sex abuse in a 6 month period.

Thank you for your consideration and please contact SCPD if you have any questions regarding our

position on the proposed legislation.

**cc: The Honorable Ruth Ann Minner
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council**

Hb 242 child victims 6-08 doc