

## **Statute of Limitations—Childhood Sexual Abuse; Senate Sub. for HB 2127**

**Senate Sub. for HB 2127** permits a criminal prosecution for childhood sexual abuse to be commenced at any time, extends the time to file a civil action for recovery of damages resulting from childhood sexual abuse, and provides exceptions in the Kansas Tort Claims Act (KTCA) for claims arising from such abuse.

### ***Criminal Prosecution (Section 2)***

The bill adds the crime of childhood sexual abuse, as defined by the bill, to the list of crimes in which a criminal prosecution may be commenced at any time. [*Note:* Continuing law provides that the prosecution for the crimes of rape, aggravated criminal sodomy, murder, terrorism, or illegal use of weapons of mass destruction may be prosecuted at any time.]

For the purposes of the bill, “childhood sexual abuse” means any of the following crimes, as defined by the Kansas Criminal Code, when the victim is under 18 years of age:

- Indecent liberties with a child or aggravated indecent liberties with a child;
- Criminal sodomy;
- Enticement of a child;
- Indecent solicitation of a child or aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Aggravated sexual battery;
- Aggravated incest;
- Aggravated human trafficking, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- Internet trading in child pornography or aggravated internet trading in child pornography; or
- Commercial sexual exploitation of a child.

### ***Limitations on Civil Actions***

The bill amends law governing the limitations on civil actions for recovery of damages suffered as a result of childhood sexual abuse to allow such actions be commenced within the following time frames, whichever occurs later:

- No more than 13 years after the date the victim turns 18 years of age; or
- No more than three years after the date of a criminal conviction for a crime related to childhood sexual abuse, as specified by the bill.

Under current law, such actions may be brought no more than three years after the victim turns 18, or no more than three years after the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse.

In addition, the bill clarifies that the damages recovered for childhood sexual abuse include those for illness or injury suffered as a result of such abuse, removes language concerning the discovery of the injury or illness that was caused by childhood sexual abuse to reflect the amendments made by the bill, and makes a technical amendment to remove a reference to actions pending on July 1, 1992.

### ***Kansas Tort Claims Act***

#### *Written Notice of Claim Against Municipality*

The bill amends law governing the procedure for payment of claims against a municipality to exempt civil childhood sexual abuse claims from the general requirement that persons with claims against a municipality or its employees under the KTCA must provide a written notice of such claims before commencing an action as provided by the section.

#### *Exceptions*

The bill amends law governing exceptions from liability under the KTCA for a governmental entity or an employee acting within the scope of the employee's employment to allow claims related to childhood sexual abuse in the following circumstances:

- For injuries resulting from the use of any public property intended or permitted to be used as a park, playground, or open area for recreational purposes, if the employee of the governmental entity commits childhood sexual abuse; and
- For claims arising from providing a juvenile justice program to juvenile offenders, if involving a claim for childhood sexual abuse.

The bill states certain exceptions to liability specified in the KTCA may not be construed to preclude, prohibit, or otherwise limit a claim for damages arising from childhood sexual abuse.

In addition, in determining the question of a governmental entity's negligence, the trier of fact may consider:

- Failure of a governmental entity to adopt or enforce a policy, regulation, or law related to childhood sexual abuse; and

- Failure to exercise reasonable discretion in the supervision of a governmental employee who commits childhood sexual abuse.

*Maximum Liability for Claims; Punitive or Exemplary Damages*

The bill specifies any claim for recovery of damages against a governmental entity arising from childhood sexual abuse is not subject to provisions in the KTCA limiting liability to \$500,000 for claims arising out of a single occurrence. Childhood sexual abuse claims against a governmental entity also are not subject to the general prohibition on punitive or exemplary damages or awards for pre-judgment interest in claims within the scope of the KTCA.