

SENATE BILL 686

D3
SB 134/21 – JPR

3lr0580
CF HB 1

By: **Senator Smith**

Introduced and read first time: February 6, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Child Sexual Abuse – Definition, Damages, and Statute of**
3 **Limitations**
4 **(The Child Victims Act of 2023)**

5 FOR the purpose of altering the definition of “sexual abuse” for purposes relating to civil
6 actions for child sexual abuse; establishing certain limitations on damages that may
7 be awarded under this Act; repealing the statute of limitations in certain civil actions
8 relating to child sexual abuse; repealing a statute of repose for certain civil actions
9 relating to child sexual abuse; providing for the retroactive application of this Act
10 under certain circumstances; and generally relating to child sexual abuse.

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 5–117, 5–303(a), and 5–518
14 Annotated Code of Maryland
15 (2020 Replacement Volume and 2022 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Education
18 Section 4–105
19 Annotated Code of Maryland
20 (2022 Replacement Volume)

21 BY repealing and reenacting, with amendments,
22 Article – State Government
23 Section 12–104(a)
24 Annotated Code of Maryland
25 (2021 Replacement Volume and 2022 Supplement)

26 BY repealing
27 Chapter 12 of the Acts of the General Assembly of 2017

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Section 2 and 3

2 BY repealing

3 Chapter 656 of the Acts of the General Assembly of 2017

4 Section 2 and 3

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
6 That the Laws of Maryland read as follows:

7 **Article – Courts and Judicial Proceedings**

8 5–117.

9 [(a) (1) In this section the following words have the meanings indicated.

10 (2) “Alleged perpetrator” means the individual alleged to have committed
11 the specific incident or incidents of sexual abuse that serve as the basis of an action under
12 this section.

13 (3) “Sexual abuse” has the meaning stated in § 5–701 of the Family Law
14 Article.]

15 (A) IN THIS SECTION, “SEXUAL ABUSE” MEANS ANY ACT THAT INVOLVES:

16 (1) AN ADULT ALLOWING OR ENCOURAGING A CHILD TO ENGAGE IN:

17 (I) OBSCENE PHOTOGRAPHY, FILMS, POSES, OR SIMILAR
18 ACTIVITY;

19 (II) PORNOGRAPHIC PHOTOGRAPHY, FILMS, POSES, OR
20 SIMILAR ACTIVITY; OR

21 (III) PROSTITUTION;

22 (2) INCEST;

23 (3) RAPE;

24 (4) SEXUAL OFFENSE IN ANY DEGREE; OR

25 (5) UNNATURAL OR PERVERTED SEXUAL PRACTICES.

26 (b) [An] NOTWITHSTANDING ANY TIME LIMITATION UNDER A STATUTE OF
27 LIMITATIONS, A STATUTE OF REPOSE, THE MARYLAND TORT CLAIMS ACT, THE
28 LOCAL GOVERNMENT TORT CLAIMS ACT, OR ANY OTHER LAW, AN action for damages
29 arising out of an alleged incident or incidents of sexual abuse that occurred while the victim

1 was a minor [shall be filed:

2 (1) At any time before the victim reaches the age of majority; or

3 (2) Subject to subsections (c) and (d) of this section, within the later of:

4 (i) 20 years after the date that the victim reaches the age of
5 majority; or

6 (ii) 3 years after the date that the defendant is convicted of a crime
7 relating to the alleged incident or incidents under:

8 1. § 3–602 of the Criminal Law Article; or

9 2. The laws of another state or the United States that would
10 be a crime under § 3–602 of the Criminal Law Article.

11 (c) In an action brought under this section more than 7 years after the victim
12 reaches the age of majority, damages may be awarded against a person or governmental
13 entity that is not the alleged perpetrator of the sexual abuse only if:

14 (1) The person or governmental entity owed a duty of care to the victim;

15 (2) The person or governmental entity employed the alleged perpetrator or
16 exercised some degree of responsibility or control over the alleged perpetrator; and

17 (3) There is a finding of gross negligence on the part of the person or
18 governmental entity.

19 (d) In no event may an action for damages arising out of an alleged incident or
20 incidents of sexual abuse that occurred while the victim was a minor be filed against a
21 person or governmental entity that is not the alleged perpetrator more than 20 years after
22 the date on which the victim reaches the age of majority] **MAY BE FILED AT ANY TIME.**

23 **(C) EXCEPT AS PROVIDED IN §§ 5–303 AND 5–518 OF THIS TITLE AND §**
24 **12–104 OF THE STATE GOVERNMENT ARTICLE, THE TOTAL AMOUNT THAT MAY BE**
25 **AWARDED UNDER THIS SECTION TO A SINGLE CLAIMANT AGAINST A SINGLE**
26 **DEFENDANT FOR INJURIES ARISING FROM A SINGLE INCIDENT OR OCCURRENCE**
27 **THAT WOULD HAVE BEEN BARRED BY A TIME LIMITATION BEFORE OCTOBER 1, 2023,**
28 **MAY NOT EXCEED \$1,500,000.**

29 5–303.

30 (a) (1) Except as provided in paragraphs (2) [and], (3), **AND (4)** of this
31 subsection, the liability of a local government may not exceed \$400,000 per an individual
32 claim, and \$800,000 per total claims that arise from the same occurrence for damages

1 resulting from tortious acts or omissions, or liability arising under subsection (b) of this
2 section and indemnification under subsection (c) of this section.

3 (2) The limits on liability provided under paragraph (1) of this subsection
4 do not include interest accrued on a judgment.

5 (3) If the liability of a local government arises from intentional tortious acts
6 or omissions or a violation of a constitutional right committed by a law enforcement officer,
7 the following limits on liability apply:

8 (i) Subject to item (ii) of this paragraph, the combined award for
9 both economic and noneconomic damages may not exceed a total of \$890,000 for all claims
10 arising out of the same incident or occurrence, regardless of the number of claimants or
11 beneficiaries who share in the award; and

12 (ii) In a wrongful death action in which there are two or more
13 claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the
14 limitation established under item (i) of this paragraph, regardless of the number of
15 claimants or beneficiaries who share in the award.

16 **(4) IF THE LIABILITY OF A LOCAL GOVERNMENT ARISES FROM A**
17 **CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5-117 OF THIS TITLE, THE LIABILITY MAY**
18 **NOT EXCEED \$850,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM A**
19 **SINGLE INCIDENT OR OCCURRENCE.**

20 5-518.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) “Compensation” does not include actual and necessary expenses that
23 are incurred by a volunteer in connection with the services provided or duties performed by
24 the volunteer for a county board of education, and that are reimbursed to the volunteer or
25 otherwise paid.

26 (3) “County board employee” means:

27 (i) Any employee whose compensation is paid in whole or in part by
28 a county board of education; or

29 (ii) A student teacher.

30 (4) “County board member” means a duly elected or appointed member of
31 a county board of education.

32 (5) “Volunteer” means an individual who, at the request of the county
33 board and under its control and direction, provides services or performs duties for the
34 county board without compensation.

1 (b) A county board of education, described under Title 4, Subtitle 1 of the
2 Education Article, may raise the defense of sovereign immunity to [any]:

3 (1) ANY amount claimed above the limit of its insurance policy; or[, if]

4 (2) IF self-insured or a member of a pool described under § 4-105(c)(1)(ii)
5 of the Education Article:

6 (I) EXCEPT AS PROVIDED IN ITEM (II) OF THIS ITEM, ANY
7 AMOUNT above \$400,000; OR

8 (II) IF THE LIABILITY OF THE COUNTY BOARD OF EDUCATION
9 ARISES FROM A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5-117 OF THIS TITLE,
10 ANY AMOUNT ABOVE \$850,000 TO A SINGLE CLAIMANT FOR CLAIMS ARISING FROM
11 A SINGLE INCIDENT OR OCCURENCE.

12 (c) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
13 SUBSECTION, A county board of education may not raise the defense of sovereign immunity
14 to any claim of \$400,000 or less.

15 (2) IF LIABILITY OF A COUNTY BOARD OF EDUCATION ARISES UNDER
16 A CLAIM OF SEXUAL ABUSE, AS DEFINED IN § 5-117 OF THIS TITLE, THE LIABILITY
17 MAY NOT EXCEED \$850,000 TO A SINGLE CLAIMANT FOR INJURIES ARISING FROM A
18 SINGLE INCIDENT OR OCCURRENCE.

19 (d) (1) The county board shall be joined as a party to an action against a county
20 board employee, county board member, or volunteer that alleges damages resulting from a
21 tortious act or omission committed by the employee in the scope of employment, by the
22 county board member within the scope of the member's authority, or by the volunteer
23 within the scope of the volunteer's services or duties.

24 (2) The issue of whether the county board employee acted within the scope
25 of employment may be litigated separately.

26 (3) The issue of whether the county board member acted within the scope
27 of the member's authority may be litigated separately.

28 (4) The issue of whether the volunteer acted within the scope of the
29 volunteer's services or duties may be litigated separately.

30 (e) A county board employee acting within the scope of employment, without
31 malice and gross negligence, is not personally liable for damages resulting from a tortious
32 act or omission for which a limitation of liability is provided for the county board under

1 subsection (b) of this section, including damages that exceed the limitation on the county
2 board's liability.

3 (f) (1) A county board member, acting within the scope of the member's
4 authority, without malice and gross negligence, is not personally liable for damages
5 resulting from a tortious act or omission for which a limitation of liability is provided for
6 the county board under subsection (b) of this section, including damages that exceed the
7 limitation on the county board's liability.

8 (2) In addition to the immunity provided under paragraph (1) of this
9 subsection, a county board member is immune as an individual from civil liability for any
10 act or omission if the member is acting:

11 (i) Within the scope of the member's authority;

12 (ii) Without malice; and

13 (iii) In a discretionary capacity.

14 (g) (1) The provisions of this subsection apply only to a volunteer.

15 (2) A volunteer who acts within the scope of the volunteer's services or
16 duties is not personally liable for damages resulting from a tortious act or omission beyond
17 the limits of any personal insurance the volunteer may have unless:

18 (i) The damages were the result of the volunteer's negligent
19 operation of a motor vehicle; or

20 (ii) The damages were the result of the volunteer's willful, wanton,
21 malicious, reckless, or grossly negligent act or omission.

22 (3) The limitations on liability contained in this subsection may not be
23 construed or applied to affect any immunities from civil liability or defenses established by
24 any other provision of the Code or available at common law to which the volunteer may be
25 entitled.

26 (h) Except as provided in subsection (e), (f), or (g) of this section, a judgment in
27 tort for damages against a county board employee acting within the scope of employment,
28 a county board member acting within the scope of the member's authority, or a volunteer
29 acting within the scope of the volunteer's services or duties shall be levied against the
30 county board only and may not be executed against the county board employee, the county
31 board member, or the volunteer personally.

32 **Article – Education**

1 (a) (1) Each county board shall carry comprehensive liability insurance to
2 protect the board and its agents and employees.

3 (2) The purchase of insurance in accordance with paragraph (1) of this
4 subsection is a valid educational expense.

5 (b) (1) The State Board shall establish standards for these insurance policies,
6 including a minimum liability coverage of not less than ~~[\$400,000]~~ **\$850,000** for each
7 occurrence.

8 (2) The policies purchased under this section shall meet these standards.

9 (c) (1) A county board complies with this section if it:

10 (i) Is individually self-insured for at least ~~[\$400,000]~~ **\$850,000** for
11 each occurrence under the rules and regulations adopted by the State Insurance
12 Commissioner; or

13 (ii) Pools with other public entities for the purpose of self-insuring
14 property or casualty risks under Title 19, Subtitle 6 of the Insurance Article.

15 (2) A county board that elects to self-insure individually under this
16 subsection periodically shall file with the State Insurance Commissioner, in writing, the
17 terms and conditions of the self-insurance.

18 (3) The terms and conditions of this individual self-insurance:

19 (i) Are subject to the approval of the State Insurance Commissioner;
20 and

21 (ii) Shall conform with the terms and conditions of comprehensive
22 liability insurance policies available in the private market.

23 (d) A county board shall have the immunity from liability described under §
24 5-518 of the Courts and Judicial Proceedings Article.

25 Article – State Government

26 12-104.

27 (a) (1) Subject to the exclusions and limitations in this subtitle and
28 notwithstanding any other provision of law, the immunity of the State and of its units is
29 waived as to a tort action, in a court of the State, to the extent provided under paragraph
30 (2) of this subsection.

1 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
2 Assembly that any claim of sexual abuse that occurred while the victim was a minor may
3 be filed at any time without regard to previous time limitations that would have barred the
4 claim.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to
6 apply retroactively to revive any action that was barred by the application of the period of
7 limitations applicable before October 1, 2023.

8 SECTION 4. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
9 the application thereof to any person or circumstance is held invalid for any reason in a
10 court of competent jurisdiction, the invalidity does not affect other provisions or any other
11 application of this Act that can be given effect without the invalid provision or application,
12 and for this purpose the provisions of this Act are declared severable.

13 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2023.