
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2635 Session of
2018

INTRODUCED BY SCHEMEL, SEPTEMBER 26, 2018

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 26, 2018

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, establishing the Truth and Restoration
3 Commission and the Truth and Restoration Fund and providing
4 for duties, participation, immunity and barred claims.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Title 44 of the Pennsylvania Consolidated
8 Statutes is amended by adding a part to read:

9 PART V

10 JUSTICE

11 Chapter

12 101. Truth and Restoration

13 CHAPTER 101

14 TRUTH AND RESTORATION

15 Subchapter

16 A. Preliminary Provisions

17 B. Administration

18 C. Program

19 D. Miscellaneous Provisions

1 SUBCHAPTER A

2 PRELIMINARY PROVISIONS

3 Sec.

4 10101. Scope of chapter.

5 10102. Definitions.

6 § 10101. Scope of chapter.

7 This chapter relates to truth and restoration.

8 § 10102. Definitions.

9 The following words and phrases when used in this chapter
10 shall have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Barred claim." A civil action arising from child sexual
13 abuse which is statutorily barred prior to the effective date of
14 this section.

15 "Child sexual abuse." The term shall have the same meaning
16 as "sexual abuse or exploitation" in 23 Pa.C.S. § 6303 (relating
17 to definitions).

18 "Commission." The Truth and Restoration Commission
19 established under section 10111(a) (relating to Truth and
20 Restoration Commission).

21 "Fund." The Truth and Restoration Fund established under
22 section 10115(a) (relating to Truth and Restoration Fund).

23 "Institution." As follows:

24 (1) Any of the following:

25 (i) A corporation, partnership, limited liability
26 company, business trust or other association.

27 (ii) A government entity.

28 (iii) An estate, trust or foundation.

29 (2) The term does not include a natural person.

30 "Participating institution." An institution which is

1 identified by the commission under section 10121(a)(2) (relating
2 to participating institutions).

3 "Victim." An individual:

4 (1) with a credible accusation of child sexual abuse;

5 (2) whose abusers were concealed by a participating
6 institution; and

7 (3) who may not bring a barred claim.

8 SUBCHAPTER B

9 ADMINISTRATION

10 Sec.

11 10111. Truth and Restoration Commission.

12 10112. Operation.

13 10113. Functions.

14 10114. Administrative Agency Law.

15 10115. Truth and Restoration Fund.

16 § 10111. Truth and Restoration Commission.

17 (a) Establishment.--The Truth and Restoration Commission is
18 established as an independent commission.

19 (b) Composition.--The commission shall consist of the
20 following members:

21 (1) Three members appointed by the Governor.

22 (2) Two members appointed by the Senate.

23 (3) Two members appointed by the House of
24 Representatives.

25 (c) Terms.--A commissioner shall serve a five-year term and
26 may serve for an additional consecutive five-year term at the
27 discretion of the appointing authority.

28 (d) Professions.--Membership of the commission shall include
29 at least one individual from each of the following professions:

30 (1) A licensed attorney.

1 (2) A certified public accountant.

2 (3) A licensed psychologist.

3 (e) Geographic diversity.--Each appointing authority may
4 consider the geographic diversity of the Commonwealth when
5 making appointments so as to compose a commission representative
6 of rural and urban areas as well as various regions of this
7 Commonwealth.

8 (f) Compensation.--A commissioner shall be uncompensated but
9 shall receive reimbursement for actual expenses and mileage.

10 (g) Vacancy.--If a vacancy on the commission occurs at the
11 end of a member's term, a member's resignation or the death of a
12 member, the appointing authority which appointed the departing
13 member shall appoint a new member to fill the vacancy.

14 § 10112. Operation.

15 (a) Meetings.--The commission shall be subject to 65 Pa.C.S.
16 Ch. 7 (relating to open meetings), except that 65 Pa.C.S. §
17 707(b) and (c) (relating to exceptions to open meetings) shall
18 not apply. The commission may hold an executive session under 65
19 Pa.C.S. § 708(a) (5) (relating to executive sessions) for
20 sensitive material.

21 (b) Quorum.--A quorum shall consist of four members.

22 (c) Staff.--The commission shall hire or contract for a
23 staff of investigators, attorneys, support staff and an
24 executive director as reasonably necessary to conduct the
25 efficient work of the commission.

26 (d) Chairperson.--The members shall annually select a
27 chairperson from among the members of the commission, who shall
28 chair meetings of the commission, establish the commission's
29 meeting agenda and ensure the efficient work of the commission.

30 § 10113. Functions.

1 (a) Primary objective.--The primary objective of the
2 commission shall be to reveal the:

3 (1) extent of child sexual abuse involving barred claims
4 which has occurred within each participating institution and
5 the degree to which the child sexual abuse involving barred
6 claims has been concealed within the participating
7 institution; and

8 (2) participating institution's compliance with current
9 laws relating to the protection of minors within the
10 participating institution.

11 (b) Secondary objective.--The secondary objective of the
12 commission shall be to establish a procedure by which a victim
13 shall be equitably compensated by the fund.

14 (c) Report.--

15 (1) The commission shall annually release a public
16 report listing each participating institution and the names
17 of identified alleged offenders, including child sexual
18 offenders and individuals who intentionally enabled the
19 concealment or reassignment of a child sexual offender, and
20 the specific offenses committed. Reports of credible abuse
21 may be released to the public if the victim authorizes the
22 release.

23 (2) The commission shall verify and acknowledge changes
24 in the operations within a participating institution which
25 are designed to comply with current laws and ensure the
26 safety of children. The commission may include its own
27 commentary as to the effectiveness of the changes.

28 (3) On or before January 31 of each year, the commission
29 shall report to the General Assembly on the commission's work
30 from the previous year and the commission's anticipated work

1 in the following year. The commission shall answer questions
2 from the General Assembly concerning the work of the
3 commission as necessary for the General Assembly to evaluate
4 the budget needs of the commission.

5 (d) Notice.--The commission shall transmit notice of
6 completion of the transfer under section 10115(g) (relating to
7 Truth and Restoration Fund) to the Legislative Reference Bureau
8 for publication in the Pennsylvania Bulletin.

9 (e) Implementation and administration.--The commission shall
10 implement and administer Subchapter C (relating to program).
11 This subsection includes rulemaking authority.

12 (f) Requirements prohibited.--The commission may not:

13 (1) require a participating institution to do anything
14 except as provided under this chapter, such as demanding a
15 change in a participating institution's structure or beliefs;
16 or

17 (2) issue a recommendation to do anything prohibited
18 under paragraph (1).

19 (g) Contribution.--The commission shall create formulas
20 under section 10115(d) and (e) to determine the contribution
21 from each participating institution to the fund and the amount
22 of compensation to victims from the fund.

23 § 10114. Administrative Agency Law.

24 The commission shall be subject to 2 Pa.C.S. Chs. 5 Subch. A
25 (relating to practice and procedure of Commonwealth agencies)
26 and 7 Subch. A (relating to judicial review of Commonwealth
27 agency action).

28 § 10115. Truth and Restoration Fund.

29 (a) Establishment.--The Truth and Restoration Fund is
30 established in the State Treasury.

1 (b) Sources.--Sources of the fund shall be:

2 (1) For the first year, equal contributions transferred
3 from the budgets of the General Assembly, judiciary and
4 Attorney General. Amounts transferred under this paragraph
5 are for the purposes of administration only and may not be
6 used to compensate victims under section 10123 (relating to
7 compensation of victims).

8 (2) Beginning in the second year and each year
9 thereafter, appropriations, not to exceed 10% of the amount
10 of the money in the fund, until the fund has adequate money
11 to fund the work of the commission. Amounts appropriated
12 under this paragraph are for the purposes of administration
13 only and may not be used to compensate victims under section
14 10123.

15 (3) Contributions under this subchapter.

16 (4) Return on money in the fund.

17 (c) Purpose.--Money in the fund shall be used for:

18 (1) compensating victims; and

19 (2) administration as provided under subsection (b) (1)
20 and (2).

21 (d) Formula for contribution from each participating
22 institution.--

23 (1) The commission shall create a formula which shall be
24 used to determine the contribution required from each
25 participating institution.

26 (2) The formula shall do all of the following:

27 (i) Be uniformly applied.

28 (ii) Take into consideration the extent of the abuse
29 which the participating institution concealed, the
30 duration of the concealment and the nature of the

1 instances of abuse.

2 (iii) Take into consideration the financial
3 condition of the participating institution.

4 (3) The formula should do all of the following:

5 (i) Account for the degree to which a participating
6 institution is related to the abuse and concealment, such
7 as the case of a merged entity if the surviving entity
8 represents more than just the entity where the abuse
9 occurred.

10 (ii) Be designed primarily as a means of
11 compensation for victims, except that the formula shall
12 also serve a lesser punitive function. Notwithstanding
13 the punitive function, the formula should not be designed
14 so as to force a participating institution into
15 bankruptcy or to unduly impede a participating
16 institution's religious, educational or charitable
17 endeavors.

18 (e) Formula for amount of compensation to victims.--

19 (1) The commission shall create a formula which shall be
20 used to determine the amount of compensation paid to each
21 victim.

22 (2) The formula shall consider the nature and extent of
23 the abuse suffered, as confirmed by the commission, any prior
24 award or settlement which the victim may have already
25 received on the same claim, the total number of victims
26 claiming compensation and the balance of the available money
27 within the fund.

28 (3) When calculating the compensation payments to
29 victims, the commission should anticipate the near depletion
30 of the fund.

1 (f) Expenses.--Expenses for the operation of the commission
2 shall be paid from the fund.

3 (g) Balance.--Any balance remaining in the fund after all
4 compensation payments are made and expenses of the commission
5 are finalized shall be transferred to the Department of Human
6 Services to fund child protective services under 23 Pa.C.S. Ch.
7 63 (relating to child protective services).

8 (h) Waste.--The commission should prevent the waste of the
9 fund by mismanagement and excessive expenses.

10 SUBCHAPTER C

11 PROGRAM

12 Sec.

13 10121. Participating institutions.

14 10122. Investigations.

15 10123. Compensation of victims.

16 10124. Barred claims.

17 10125. Immunity.

18 § 10121. Participating institutions.

19 (a) Participation.--

20 (1) An institution which reasonably believes that the
21 institution has employed, managed, directed, certified or
22 aided an individual which may have committed an act of child
23 sexual abuse may participate in the work of the commission.

24 (2) To become a participating institution, the governing
25 body of the institution must send a written notice to the
26 commission so that the commission receives the notice before
27 January 1, 2020. Upon receipt of the written notice, the
28 commission shall submit a notice identifying the institution
29 as a participating institution to the Legislative Reference
30 Bureau for publication in the Pennsylvania Bulletin.

1 (b) Continuation.--

2 (1) To continue to be considered a participating
3 institution, a participating institution must comply with
4 each reasonable request, subpoena and other demand for
5 information or other participation as reasonably required by
6 the commission.

7 (2) If a participating institution does not comply under
8 paragraph (1), the commission shall give the participating
9 institution written notice detailing the noncompliance.

10 (3) If noncompliance is not remedied within three months
11 of receipt of the notice under paragraph (2), the commission
12 may eliminate the institution as a participating institution.
13 The commission shall submit a notice eliminating the
14 institution as a participating institution to the Legislative
15 Reference Bureau for publication in the Pennsylvania
16 Bulletin. The commission may not engage in punitive or
17 disciplinary conduct other than the elimination of the
18 institution as a participating institution or, for
19 participating institutions, the assessment of a contribution
20 to the fund.

21 (c) Appeal.--A participating institution may appeal each
22 decision or demand of the commission to Commonwealth Court,
23 which shall be the final arbiter of the matter.

24 (d) Withdrawal.--After December 31, 2019, a participating
25 institution may not withdraw from participation without the
26 written approval of the commission. If a participating
27 institution has withdrawn, the institution may participate once
28 again at any time prior to January 1, 2020.

29 (e) Contributions.--Contributions to the fund shall be
30 mandatory for participation. The commission may enforce payment

1 as a judgment lien against the participating institution. The
2 commission shall allow a participating institution to make
3 contributions over a five-year period, with interest at the
4 legal rate. The commission may adjust a contribution amount
5 based on reasonable factors, such as a significant and
6 unanticipated decline in the financial resources of a
7 participating institution.

8 § 10122. Investigations.

9 (a) Degree of culpability.--The commission shall evaluate
10 the degree of culpability for each participating institution for
11 concealing child sexual abuse. The commission shall consider the
12 extent of the abuse, the number and nature of the positions of
13 individuals within the participating institution who knew of the
14 abuse and the length of time over which the abuse and
15 concealment occurred.

16 (b) Testimony.--

17 (1) The commission shall, under oath, hear the testimony
18 of victims, representatives and staff from a participating
19 institution, accused individuals and other individuals who
20 may have evidence pertinent to the work of the commission.

21 (2) The commission may compel testimony and other
22 evidence through subpoena and may administer an oath to an
23 individual who offers the evidence. Commission staff may
24 follow leads and solicit unsworn testimony as necessary to
25 aid the commission in the commission's investigation and
26 analysis.

27 (c) Jurisdiction.--The commission may petition the
28 Commonwealth Court to enforce a subpoena or oath under this
29 chapter.

30 (d) Reporting of crime.--The commission or commission staff

1 shall report to law enforcement any information obtained through
2 the commission's work which may be evidence of a reportable
3 crime.

4 (e) Authority.--The commission may not obtain a search
5 warrant. Commission staff may inspect files and other evidence
6 in the possession of a participating institution with the
7 cooperation of the participating institution.

8 (f) Favoritism.--The commission shall critically evaluate
9 accusations and defenses so that no party is favored.

10 § 10123. Compensation of victims.

11 The following shall apply:

12 (1) The commission shall receive requests for
13 compensation from victims and shall make reasonable efforts
14 to contact possible victims who may be identified through the
15 work of the commission.

16 (2) To qualify for compensation, a victim must request
17 compensation through the commission and be alive at the time
18 that compensation payments are paid from the fund.

19 (3) A request for compensation must be made to the
20 commission no later than December 31, 2023.

21 (4) Payments for compensation shall be made after the
22 expiration of the five-year contribution period under section
23 10121(e) (relating to participating institutions).

24 (5) To receive a payment, a victim must sign a release
25 of all claims arising out of the incident for which the
26 victim receives compensation.

27 § 10124. Barred claims.

28 (a) Change.--A participating institution shall not be
29 subject to a barred claim as a result of a statutory change
30 relating to child sexual abuse, including a civil time period

1 which may be created by a constitutional amendment or otherwise.

2 (b) Tolling.--A tolling of a statute of limitations or a
3 statute of repose based on a legal theory shall not apply to a
4 barred claim against a participating institution.

5 (c) Applicability.--A statute of limitations or a statute of
6 repose for a barred claim in effect on the effective date of
7 this section shall continue to apply to participating
8 institutions.

9 § 10125. Immunity.

10 (a) Sovereign immunity.--An institution as defined in
11 paragraph (1)(ii) of the definition of "institution" in section
12 10102 (relating to definitions) is entitled to sovereign
13 immunity under 42 Pa.C.S. Ch. 85 Subchs. B (relating to actions
14 against Commonwealth parties) and C (relating to actions against
15 local parties).

16 (b) Participating institutions.--Each individual and
17 participating institution providing evidence, truthful to the
18 best knowledge of the testifier, to the commission shall be
19 immune from the civil claim of a party who may claim to be
20 harmed by the testimony.

21 (c) Commission.--The commission, members of the commission
22 and commission staff shall be immune from the civil claim of a
23 party who may claim to be harmed if the commission, members of
24 the commission and commission staff are acting in good faith and
25 within the mandate of the commission.

26 SUBCHAPTER D

27 MISCELLANEOUS PROVISIONS

28 Sec.

29 10131. Expiration.

30 § 10131. Expiration.

1 This chapter shall expire on the date of the publication of
2 the notice under section 10113(d) (relating to functions).

3 Section 2. This act shall take effect immediately.