

Sex abuse cases part of a confusing picture

Nancy Frazier O'Brien Catholic News Service | Apr. 8, 2011

WASHINGTON -- When two men alleged that they had been abused in Texas during the 1970s and '80s by a man associated with the youth wing of the Knights of Columbus, they filed suit not in Texas but in Connecticut, where the Knights' national headquarters is located.

And when Delaware opened up a two-year window that allowed child sex abuse lawsuits that would have previously been barred under the state's statute of limitations, some of the lawsuits filed dealt with abuse that was alleged to have taken place outside of Delaware.

Those cases point up the confusion and legal maneuvers that have resulted from the wide array of ever-changing state laws affecting the statute of limitations in child sex abuse cases.

"Attorneys will definitely forum-shop," said Anthony R. Picarello Jr., general counsel for the U.S. Conference of Catholic Bishops. A civil claim that had been legally prohibited for many years in one state might be resurrected in another with the passage of legislation removing the statute of limitations retroactively or extending the age by which a person alleging abuse must file suit.

A statute of limitations designates the number of years that must pass before a particular criminal act can no longer be prosecuted or a particular civil action can no longer be filed. In cases of child sex abuse, the number of years begins only when the victim reaches the age of majority; other factors, such as repressed memories, can affect when the clock begins to run as well.

Picarello said statutes of limitations are based in part on fairness, as an acknowledgment that "it is almost impossible to defend against claims that are very old, and correspondingly difficult for judges and juries to have everything they need to do their jobs effectively."

"Plaintiffs can always submit their own testimony as evidence, which alone can satisfy the low burden of proof in civil cases; but the evidence available to defendants would be severely compromised -- witnesses die, those who remain have faded memories, and documents deteriorate or get lost," he added.

In March alone, three bills were signed into law affecting statutes of limitations.

Virginia Gov. Bob McDonnell signed a bill March 28 extending from two years after majority to 20 years after majority the age when alleged victims of child sex abuse can file civil suits related to the abuse. As originally proposed, the extension would have been to 25 years after majority.

In Guam March 9, Gov. Eddie Baza Calvo signed legislation eliminating the criminal statute of limitations for any instances of child sex abuse committed in the future and creating a two-year period when civil suits may be brought in cases of child sex abuse alleged to have taken place at any time in the past.

The latter law applies only to the alleged abusers themselves, not to institutions with which they had been

associated.

In Pennsylvania, where a Philadelphia grand jury report has made the Archdiocese of Philadelphia the epicenter of the child sex abuse scandal in recent months, three bills are under consideration that would allow civil lawsuits over abuse that took place any time in the past and both civil and criminal actions against child sex abusers indefinitely into the future.

Amy P. Hill, director of communications for the Pennsylvania Catholic Conference, noted that over the years Pennsylvania has raised the age limit for alleged victims of sex abuse from 20 to 50 for criminal prosecution of their abusers and from age 20 to 30 for civil actions -- moves that the conference did not oppose.

But she said the public policy arm of the state's 10 Catholic dioceses does not support the legislation proposed by state Reps. Louise Williams Bishop and Mike McGeehan, both Democrats from Philadelphia.

"The passage of time makes it nearly impossible for a church or any other organization to defend itself against allegations from 30, 40 and 50 years ago," Hill said of the proposal to open a two-year "look-back" period. "In addition, standards of 'reasonableness' evolve and change dramatically over time. What are expected levels of awareness and vigilance today are far different from what was understood 50 years ago."

The U.S. Supreme Court has ruled unconstitutional any state moves to extend criminal statutes of limitations retroactively but has allowed retroactive extension of civil statutes of limitations to stand.

California and Delaware have previously approved such retroactive lifting of the civil statute of limitations. In California alone, financial settlements from decades-old abuse cases exceeded \$1.8 billion after the statute of limitations was lifted for one year.

The Diocese of Wilmington -- which covers all of Delaware, as well as parts of Maryland's Eastern Shore -- is still working to emerge from bankruptcy protection after passage of the 2007 Child Victims Act lifted Delaware's statute of limitations on sexual abuse crimes and led to more than 150 civil lawsuits.

Picarello said that in addition to opposing retroactive extension of statutes of limitations, state Catholic conferences have opposed legislative proposals that "by their very language expressly target the church."

Bills that target only private entities that serve children but exclude public entities such as public schools, juvenile justice facilities and foster care programs have been challenged on religious freedom grounds, he said, noting that the Catholic Church is "the largest single provider of services to children" in the United States.

Even when the proposals do not specifically mention public entities, they might rely on the doctrine of sovereign immunity to ensure that the bills apply "to all church entities but almost nothing else," Picarello added. "The advocates for these laws unmistakably have the church in mind."

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