

**REPORT OF THE JUDICIAL COUNCIL
CIVIL CODE ADVISORY COMMITTEE ON 2019 HB 2306**

DECEMBER 11, 2020

In May 2020, Representative Fred Patton requested that the Judicial Council review and make recommendations on 2019 HB 2306. The bill would amend K.S.A. 60-523 to eliminate the statute of limitations on civil actions for recovery of damages resulting from childhood sexual abuse. At its June 5, 2020 meeting, the Judicial Council assigned the study to the Civil Code Advisory Committee. A copy of the bill is attached at page 13.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Civil Code Advisory Committee are:

F. James Robinson, Chairman, practicing attorney in Wichita and member of the Kansas Judicial Council

James M. Armstrong, practicing attorney, Wichita

Prof. James M. Concannon, Senator Robert J. Dole Distinguished Professor of Law Emeritus at Washburn University School of Law, Topeka

Hon. Bruce T. Gatterman, Chief Judge in the 24th Judicial District, Larned

Allen G. Glendenning, practicing attorney, Great Bend

John L. Hampton, practicing attorney, Lawrence

Hon. Kellie E. Hogan, District Court Judge in the 18th Judicial District, Wichita

Hon. Kevin P. Moriarty, Retired District Court Judge in the 10th Judicial District, Olathe

Prof. Lumen N. Mulligan, Earl B. Shurtz Research Professor, Kansas University School of Law, Lawrence

Etta L. Walker, practicing attorney, Sharon Springs

Hon. Teresa L. Watson, District Court Judge in the 3rd Judicial District, Topeka

Donald W. Vasos, practicing attorney, Mission

Angel Zimmerman, practicing attorney, Topeka

INTRODUCTION

HB 2306 was introduced on February 13, 2019 at the request of fourteen members of the House of Representatives. The bill would amend K.S.A. 60-523 to eliminate the existing statute of limitations on civil actions for damages resulting from childhood sexual abuse. Currently, K.S.A. 60-523 allows a victim of childhood sexual abuse to commence a civil action within three years after the person reaches the age of 18 or within three years after the person discovers or should have discovered that injury or illness was caused by the abuse, whichever is later. HB 2306 would replace the existing limitations with language providing that such an action “may be commenced at any time.” The bill was referred to the House Judiciary Committee, where a hearing was held on February 11, 2020. The American Tort Reform Association’s written-only testimony—which supported an extended statute of limitations, though not a complete elimination—asserted that the bill could not constitutionally revive all time-barred claims as the proponents seemed to intend. The bill died in Committee, but Representative Fred Patton, who chairs the House Judiciary Committee, later requested that the Judicial Council study the bill, “particularly with regard to the interplay between the bill’s proposed amendments to KSA 60-523 and the statute of repose found in KSA 60-515.” The study request, a copy of which is attached at page 15, also asked the Judicial Council to consider whether the time limitations can be removed retroactively without raising constitutional issues. Finally, the study request sought a survey of how other states have addressed statutes of limitations in childhood sexual abuse actions. This report provides the legal analysis and information requested but does not make a policy recommendation about whether HB 2306 or some other amendment to the statute of limitations in childhood sexual abuse cases should be adopted.

METHOD OF STUDY

The Committee met two times during the summer and fall of 2020 to conduct the study. The Committee reviewed a number of background materials including: HB 2306 and the written testimony offered by conferees when the bill was heard in House Judiciary; applicable Kansas statutes, including K.S.A. 60-523 and 60-515; relevant Kansas case law; other states’ civil statutes of limitation in childhood sexual abuse cases; and summaries of recent changes in other states’ pertinent statutes of limitations.

CURRENT KANSAS STATUTES

The current statute of limitations for civil childhood sexual abuse actions is found in K.S.A. 60-523, which HB 2306 sought to amend. That statute provides, in part:

60-523. Limitations on actions for recovery of damages suffered as a result of childhood sexual abuse. (a) No action for recovery of damages suffered as a result of childhood sexual abuse shall be commenced more than three years after the date the person attains 18 years of age or more than three years from the date the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse, whichever occurs later.

.....

(c) Discovery that the injury or illness was caused by childhood sexual abuse shall not be deemed to have occurred solely by virtue of the person's awareness, knowledge or memory of the acts of abuse. The person need not establish which act in a series of continuing sexual abuse incidents caused the injury or illness complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is a part of a common scheme or plan of sexual abuse.

(d) This section shall be applicable to:

- (1) Any action commenced on or after July 1, 1992, including any action which would be barred by application of the period of limitation applicable prior to July 1, 1992;
- (2) any action commenced prior to July 1, 1992, and pending on July 1, 1992.

Analysis of the statute of limitations in K.S.A. 60-523 governing childhood sexual abuse cases also involves K.S.A. 60-515(a), which applies to all tortious acts committed while a plaintiff is a minor regardless of whether the person is a minor or an adult when the cause of action accrues. *Ripley v. Tolbert*, 260 Kan. 491, 497, 921 P.2d 1210 (1996). That statute provides as follows:

60-515. Persons under legal disability. (a) *Effect.* Except as provided in K.S.A. 60-523, if any person entitled to bring an action, other than for the recovery of real property or a penalty or a forfeiture, at the time the cause of action accrued or at any time during the period the statute of limitations is running, is less than 18 years of age, an incapacitated person or imprisoned for a term less than such person's natural life, such person shall be entitled to bring such action within one year after the person's disability is removed, except that no such action shall be commenced by or on behalf of any person under the disability more than eight years after the time of the act giving rise to the cause of action.

.....

A statute of limitations is a law that stipulates the maximum length of time a person has to file a lawsuit. Statutes of limitations “find their justification in necessity and convenience and serve the practical purpose of sparing courts from litigating stale claims and people from being put to the defense of claims after memories fade and witnesses disappear.” *Pfeifer v. Federal Exp. Corp.*, 297 Kan. 547, 558, 304 P.3d 1226 (2013). They “encourage diligence on the part of those whose rights have been infringed.” *Church Mut. Ins. Co. v. Rison*, 16 Kan.App.2d 315, 319, 823 P.2d 209 (1991). They are “by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the avoidable and unavoidable delay.” *Stephens v. Snyder Clinic Ass’n*, 230 Kan. 115, 132, 631 P.2d 222 (1981).

While a statute of limitations puts a time limit on how long a person can wait to commence a lawsuit after a cause of action accrues, a statute of repose “limits the time during which a cause of action can arise and usually runs from an act of a defendant. It abolishes the cause of action after the passage of time even though a cause of action may not have yet accrued.” *Harding v. K.C. Wall Products, Inc.*, 250 Kan. 655, Syl. ¶ 6, 831 P.2d 958 (1992).

In *Harding*, the Kansas Supreme Court explained another critical difference between statutes of limitation and statutes of repose. Because a statute of limitations cuts off the remedy of pursuing an accrued cause of action after a set period of time, it is remedial and procedural in nature. Conversely, since a statute of repose abolishes a cause of action after a set period of time without regard to whether the action has accrued, it is substantive. Once the set period of time has run, a defendant has a vested property interest in the statute-of-repose defense under the Kansas Constitution, Bill of Rights, § 18. “The legislature has the power to revive actions barred by a statute of limitations if it specifically expresses its intent to do so through retroactive application of a new law. The legislature *cannot* revive a cause of action barred by a statute of repose, as such action would constitute the taking of property without due process.” 250 Kan. at 667-69 (emphasis in original).

KANSAS CASE LAW

K.S.A. 60-523 was enacted in 1992. At the same time, the Legislature added to K.S.A. 60-515(a) the prefatory phrase “except as provided in K.S.A. 60-523.” The resulting interaction between the two statutes has been analyzed several times by Kansas appellate courts.

The first appellate decision dealing with the application of K.S.A. 60-523 and its interaction with K.S.A. 60-515(a) was *Swartz v. Swartz*, 20 Kan. App. 2d 704, 894 P.2d

209 (1995), in which the Kansas Court of Appeals affirmed the district court's dismissal of an action on the ground that the claims were barred by the eight-year statute of repose in K.S.A. 60-515(a). In that case the plaintiff, who was born in 1968, alleged the sexual abuse took place on several occasions between 1979 and 1982. She filed the petition on November 9, 1993. The plaintiff asserted she did not realize until November 1992 that her emotional problems were due to childhood sexual abuse and that the 1992 enactment of K.S.A. 60-523 extended the period in which she could file suit. The Court of Appeals agreed with the district court's ruling that K.S.A. 60-515(a) is a statute of repose that had abolished the cause of action at the end of the eight-year period following the defendant's last act, even though the action might not have yet accrued. "That determination leads to the conclusion that K.S.A. 60-523(d) does not and cannot revive a cause of action barred by K.S.A. 60-515(a)." *Id.*, 20 Kan. App. 2d at 708.

The Kansas Supreme Court issued two opinions regarding the two statutes on July 12, 1996, *Ripley v. Tolbert*, 260 Kan. 491, 921 P.2d 1210 (1996), and *Shirley v. Reif*, 260 Kan. 514, 920 P.2d 405 (1996). Although it is not clear when the alleged childhood abuse in *Ripley* occurred, the plaintiff would have turned 18 in 1961 and 21 in 1964. The plaintiff argued that the eight-year statute of repose in K.S.A. 60-515(a) did not apply to her because she was an adult when her cause of action arose on or about April 18, 1991 when she spontaneously experienced a recalled memory of her father sexually abusing her. She filed suit for various causes of action three days before the three-year anniversary of the alleged memory and asserted that other statutes of limitation having no statutes of repose, including K.S.A. 60-512, 60-514, and 60-513(a)(4), were applicable to her claims. Under these theories, she contended her claims were either timely as being within three years from discovery of her injury, or merely barred by a statute of limitations and thus properly revived by the enactment of K.S.A. 60-523. The court held that "the 8-year statute of repose under 60-515(a) applies to all tortious acts committed while the plaintiff is a minor, regardless of how old the plaintiff is (a minor or an adult) when the action actually accrues." *Ripley*, 260 Kan. at 497. The court concluded that since plaintiff was a minor when the alleged sexual abuse occurred, all of plaintiff's claims were barred as of 1969 or 1972 by the substantive statute of repose in K.S.A. 60-515(a) before K.S.A. 60-523 was enacted "and cannot be revived without violating due process." *Id.* at 511-12.

In *Shirley*, *supra*, the Supreme Court reversed a district court's grant of summary judgment to the defendants on limitations grounds. The court agreed with the holdings in *Swartz*, clarifying that the one-year time limit at the beginning of K.S.A. 60-515(a) is a statute of limitations, while the eight-year limitation at the end of the paragraph is a substantive statute of

repose. *Shirley*, 260 Kan. at 523. The court also found that the district court had erred in determining that the plaintiffs' claims, filed in 1995, had been barred by the expiration of the eight-year statute of repose in 1994. The court held that whether the eight-year statute of repose has run must be evaluated as of the 1992 enactment of K.S.A. 60-523, not as of the date the lawsuit is filed. The court detailed how a claim should be analyzed under the two statutes:

“The revival of any dead claim would occur upon the enactment of K.S.A. 60-523 in 1992, not upon the filing of a 60-523 suit in 1995. If a claim is barred by a statute of repose in 1992, then a defendant has substantive rights in this defense. This defense cannot be removed and the claim cannot be revived by 60-523 in 1992 without taking the defendant's property and without violating the defendant's due process rights. On the other hand, if the claim is alive in 1992 or merely barred by a procedural statute of limitations in 1992, then a defendant does not have any vested, substantive rights in the time bar defense. As such, K.S.A. 60-523 can retroactively apply upon its enactment and revive the claim in 1992, even though the claim is barred by a statute of limitations, without violating due process.

Further, the statute of repose that may have applied to a claim in 1992, which was running but not yet expired, could be removed altogether by a revival statute without violating due process. This is because in 1992, the defendant would not have any vested right in the nonexpired statute of repose under 60-515(a). Thus, if a plaintiff's claim is merely barred by a statute of limitations in 1992, then the claim can be properly revived in 1992. Once the dead claim under 60-515(a) is revived by 60-523, the plaintiff has a brand new statute under which to bring the suit—K.S.A. 60-523. K.S.A. 60-523 allows a defendant to file a sexual abuse claim within 3 years after the plaintiff reasonably discovers (defined broadly) his or her injury was caused by childhood sexual abuse. If the plaintiff files the revived claim within the time allowed by 60-523, then the claim is timely filed.” *Id.*, 260 Kan. at 524-25.

The most recent appellate decision on these two statutes is *Doe v. Popravak*, 55 Kan. App. 2d 1, 421 P.3d 760 (2017). The plaintiff alleged he was abused by a Catholic priest in 1972, when the plaintiff was 11 years old. He filed a lawsuit when he was 53 seeking damages for the abuse. The court affirmed the district court's judgment that the plaintiff's claims were barred by the eight-year statute of repose in K.S.A. 60-515(a). *Id.*, 55 Kan. App. 2d at 12. The court also held that although fraudulent concealment by affirmative action or by silence may toll a statute of repose, the plaintiff did not plead facts sufficient to support those theories. *Id.*, 55 Kan. App. 2d at 16-17. Finally, the court held that the clear “no such action shall be commenced” language in K.S.A. 60-515(a) “must be taken to mean what it says—the court-made remedy of estoppel can't be grafted onto it.” *Id.*, 55 Kan. App. 2d at 19-20.

PROPOSED AMENDMENTS TO K.S.A. 60-523 IN HB 2306

HB 2306 would make the following change to K.S.A. 60-523(a):

60-523. (a) ~~No~~ An action for recovery of damages suffered as a result of childhood sexual abuse shall *may* be commenced ~~more than three years after the date the person attains 18 years of age or more than three years from the date the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse, whichever occurs later~~ *at any time*.

Because the bill deletes the discovery concept from subsection (a), the definition of “injury or illness” is stricken from subsection (b), and the entirety of subsection (c), which deals with discovery of the injury or illness, is also stricken. The result is there would be no statute of limitations in place for childhood sexual abuse actions, and a lawsuit alleging damages from such abuse could be filed at any time.

The Committee has been asked to consider the interplay between these proposed changes and the eight-year statute of repose in K.S.A. 60-515. Although the Committee cannot be certain how the courts would interpret the amendments in the bill, it can make some predictions based on the courts’ prior decisions regarding K.S.A. 60-523 and 60-515(a). “It is recognized under the doctrine of stare decisis that once a point of law has been established by a court, that point of law will generally be followed by the same court and all courts of lower rank in subsequent cases where the same legal issue is raised. Stare decisis operates to promote system-wide stability and continuity by ensuring the survival of decisions that have been previously approved.” *Crist v. Hunan Palace, Inc.*, 277 Kan. 706, Syl. ¶ 4, 89 P.3d 573 (2004).

The Committee applied the existing case law in its analysis of the changes proposed in HB 2306 and how the changes may or may not affect different categories of claims.

1. **Claims based on actions that occurred before July 1, 1984.** The Kansas Supreme Court has held that when the legislature enacted K.S.A. 60-523 in 1992 as an exception to K.S.A. 60-515(a), it could not revive a claim already barred at that time by the eight-year statute of repose because it would violate the defendant’s due process rights. *Shirley v. Reif, supra*, 260 Kan. at 524-25. There is no action the legislature can take at this point to revive a claim based on actions that took place before July 1, 1984 because the statute-of-repose defense had already vested when the exception to the statute of repose for childhood sexual abuse cases was enacted. Eliminating the statute of limitations in K.S.A. 60-523 would not revive claims in this category.

2. **Claims based on actions that occurred on or after July 1, 1984.** The legislature had the authority to shorten or remove the eight-year statute of repose in K.S.A. 60-515(a) in 1992 if it had not yet expired, so the 1992 enactment of K.S.A. 60-523 and insertion of the prefatory clause “except as provided in K.S.A. 60-523” at the beginning of K.S.A. 60-515(a) has effectively eliminated the statute of repose for any claim relating to actions taking place on or after July 1, 1984. *Shirley*, 260 Kan. at 524-25. Thus, the only potential bar on such a claim is the statute of limitations in K.S.A. 60-523. If the existing statute of limitations has not yet expired, the amendments proposed in HB 2306 are not needed. But if the statute of limitations has already run, the legislature has the authority to revive actions barred by a statute of limitations if it specifically expresses its intent to do so. *Harding, supra*, 250 Kan. at 669. Therefore, the proposed elimination of the statute of limitations in HB 2306 could revive a claim that is based on actions that occurred after July 1, 1984, and for which suit was not filed within three years after the plaintiff turned 18 or discovered the injury was caused by childhood sexual abuse.

The above analysis of the claims based on post-1984 actions assumes that the “except as provided in K.S.A. 60-523” language at the beginning of K.S.A. 60-515(a) means that K.S.A. 60-515(a) is completely replaced by K.S.A. 60-523 in childhood sexual abuse actions. However, there is at least an ambiguity as to whether K.S.A. 60-523 replaces the statute of limitations and statute of repose in K.S.A. 60-515(a) or merely extends them. An argument could be made that if a plaintiff was given the extra time to file a claim but then allowed the K.S.A. 60-523 statute of limitations to lapse, the eight-year statute of repose would again be applied to bar the claim. While plausible, the interpretation that K.S.A. 60-523 operates to extend, rather than replace, the statute of limitations and statute of repose in K.S.A. 60-515(a) is inconsistent with the purpose of a statute of repose, which is to create a substantive right to be free from liability after a certain amount of time.

The Committee was also asked to consider whether the language in the bill is sufficient to accomplish the elimination of the statute of limitations as the bill proponents intended and whether the legislature would also need to amend K.S.A. 60-515 to accomplish that objective. If the proponents of HB 2306 believed that eliminating the statute of limitations in K.S.A. 60-523 would revive all claims, no matter how old, there is no language that can accomplish that objective in light of the Kansas Supreme Court’s holding that a vested statute-of-repose defense cannot be removed without violating due process rights. To the extent that the proponents intend to revive claims in category 2 above through retroactive application of the change proposed in

HB 2306, it may be advisable to include additional language to make clear the legislature's intent for the amendment to be retroactively applied. An amendment to K.S.A. 60-515, while not absolutely necessary, could eliminate any question that K.S.A. 60-523 completely supplants K.S.A. 60-515 in childhood sexual abuse cases.

STATUTES OF LIMITATIONS IN OTHER STATES

Approximately 40 states have amended their civil statute of limitations in the last 20 years. The changes have been quite varied in scope, from slight extensions of the age cap for filing an action relating to childhood sexual abuse to a complete elimination of the statute of limitations. It is difficult to categorize the states' laws in this area because there are so many variations. Some states have a higher age cap, but no discovery rule. Some states have a lower age cap with a generous discovery rule. Many states that have loosened the restrictions on filing a civil case for childhood sexual abuse have limited the new provisions to cases against perpetrators. Claims for damages from persons or entities other than the perpetrator often have additional restrictions, such as no discovery rule or allowing damages only on a finding of gross negligence.

Only a handful of states have totally eliminated the statute of limitations as HB 2306 would have done. There are other states that have eliminated the statute of limitations, but only in certain circumstances. For example, Alaska has no statute of limitations if the conduct constituted certain crimes, but other crimes are still capped at age 20 or 21, including misdemeanor sexual assault, misdemeanor sexual abuse of a minor, and incest. ALASKA STAT. ANN. § 09.10.065. Connecticut has no civil statute of limitations, but only if the actions led to a conviction for sexual assault or first-degree aggravated sexual assault. CONN. GEN. STAT. § 52-577e. Nevada, by case law, has no statute of limitations if the sexual abuse is established by clear and convincing evidence. That standard was met in the governing case because the defendant had been criminally convicted. *Petersen v. Bruen*, 106 Nev. 271, 792 P.2d 18 (1990). Utah has no statute of limitations only as against the perpetrator, and suits can only be brought against a living individual. UTAH CODE § 78B-2-308.

A number of states have amended their statutes to revive claims for which the statute of limitations had already expired. This is accomplished in different ways. Many states have extended the age cap and applied the change retroactively. In some states this is permanent, but other states have opened a revival "window" of varying lengths of time during which time-barred

suits can be brought. Many have been one or two years long, but some have been renewed or extended. California was the first state to take this action, enacting a one-year window in 2003. California now requires that a case for childhood sexual assault be brought within 22 years of reaching majority or within 5 years of discovery. No action can be brought against a non-perpetrator after the plaintiff's 40th birthday "unless the person or entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault."

California also has a detailed procedure that must be followed whenever the plaintiff is over 40 years old. The petition must use "Doe" for the defendant's name and must be accompanied by "certificates of merit" signed by the attorney and a licensed mental health care practitioner setting forth certain factual declarations. The court must review the certificates in camera and determine whether there is reasonable and meritorious cause for filing the action before the defendant can be served with process. In order to substitute the defendant's name for "Doe," the plaintiff's attorney must submit an application and an executed certificate of corroborative fact, in which the attorney sets forth the nature and substance of the corroborative facts that support the allegations. The opinion of a mental health practitioner does not constitute a corroborative fact. CAL. CIV. PROC. CODE § 340.1.

Approximately half the states have statutes of limitations with an age cap of under 35 years old. Kansas is near the bottom of the list with its 21-year age cap, along with Arkansas, South Dakota, and Washington. Only Iowa is lower, as its statute of limitations is capped at age 19. There are seven states whose statutes of limitation are capped at age 23-25. Thirteen states have age limits between 26 and 34. Almost all of these states also have a discovery rule which provides a possibility for a suit to be brought later. Most of the discovery rules use language similar to K.S.A. 60-523, measuring from the date the person discovered or should have discovered that the injury was caused by the sexual abuse. However, a few are different. New Mexico's statute of limitations requires the claim to be brought no later than the plaintiff's 24th birthday or three years from the date the plaintiff first disclosed the childhood sexual abuse to a licensed medical or mental health care provider. N.M. STAT. ANN. 1978, § 37-1-30. North Dakota's discovery rule is narrower, stating "a claim for relief resulting from childhood sexual abuse must be commenced within ten years after the plaintiff knew or reasonably should have known that a potential claim exists resulting from alleged childhood sexual abuse." N.D. CENT.

CODE. ANN. § 28-01-25.1. Finally, South Dakota has modified its discovery rule to include a cap at age 40 for all claims except against the perpetrator. S.D. CODIFIED LAWS § 26-10-25. There are about nine states that have an age cap of 35-49 years, and five more that are at age 50 or above. Many states have amended their statutes several times over the last twenty years, getting to where they are now through incremental changes.

As discussed earlier in this report, the changes proposed in HB 2306 would not revive claims based on actions that occurred prior to July 1, 1984. The legislature's authority to make prospective changes is unlimited. It is also possible for the legislature to make changes that apply retroactively, but are tailored to stay within the constitutional limitations. For example, if the legislature wanted to extend the age limitation in K.S.A. 60-523, there is room to do that without running afoul of the statute of repose. It has been 36 years since July 1, 1984, and there would be no K.S.A. 60-515(a) statute-of-repose issues for potential claims of any person born since that date. Extending the age cap in K.S.A. 60-523 could revive claims for some plaintiffs who are more than three years past both the age of 21 and discovery that the injury was caused by childhood sexual abuse, but would avoid potential constitutional issues. The legislature can make any changes it deems appropriate to the statute of limitations in K.S.A. 60-523 as long as no attempt is made to apply the changes retroactively to the category of claims for which defendants have vested due process rights.

CONCLUSION

The changes proposed by HB 2306 are impacted by the interplay between K.S.A. 60-523 and K.S.A. 60-515(a). The legislature cannot revive a claim based on acts that occurred before July 1, 1984 by eliminating the statute of limitations in K.S.A. 60-523 because the eight-year statute-of-repose defense in K.S.A. 60-515(a) had already vested in 1992 when K.S.A. 60-523 was enacted. However, the time limitations in K.S.A. 60-523 can be removed retroactively for claims based on acts that occurred on or after July 1, 1984 without raising constitutional issues.

Kansas's age cap in childhood sexual abuse cases is one of the lowest in the country, and the legislature has many options for making justice more accessible to sexual abuse victims without raising due process issues. Whether to raise the age cap and, if raised, how far above the current age 21 to set the new limit, or whether to make any other changes to the law in this area, are public policy decisions for the legislature to make.

HOUSE BILL No. 2306

By Representatives Holscher, Ellis, Gartner, Howard, Karleskint, Kuether, Probst,
S. Ruiz, Schreiber, Stogsdill, Warfield, Weigel, Whipple and Woodard

2-13

1 AN ACT concerning civil actions; relating to limitations on actions;
2 victims of childhood sexual abuse; amending K.S.A. 2018 Supp. 60-
3 523 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2018 Supp. 60-523 is hereby amended to read as
7 follows: 60-523. (a) ~~No~~ An action for recovery of damages suffered as a
8 result of childhood sexual abuse ~~shall~~ *may* be commenced ~~more than three~~
9 ~~years after the date the person attains 18 years of age or more than three~~
10 ~~years from the date the person discovers or reasonably should have~~
11 ~~discovered that the injury or illness was caused by childhood sexual abuse,~~
12 ~~whichever occurs later at any time.~~

13 (b) As used in this section:

14 (1) "Injury or illness" ~~includes psychological injury or illness, whether~~
15 ~~or not accompanied by physical injury or illness.~~

16 (2) "childhood sexual abuse" includes any act committed against the
17 person which act occurred when the person was under the age of 18 years
18 and which act would have been a violation of any of the following:

19 ~~(A)(1)~~ Indecent liberties with a child as defined in K.S.A. 21-3503,
20 prior to its repeal, or ~~subsection (a) of K.S.A. 2018 Supp. 21-5506(a), and~~
21 ~~amendments thereto;~~ ~~(B)(2)~~ aggravated indecent liberties with a child as
22 defined in K.S.A. 21-3504, prior to its repeal, or ~~subsection (b) of K.S.A.~~
23 2018 Supp. 21-5506(b), and amendments thereto; ~~(C)(3)~~ aggravated
24 criminal sodomy as defined in K.S.A. 21-3506, prior to its repeal, or
25 ~~subsection (b) of K.S.A. 2018 Supp. 21-5504(b), and amendments thereto;~~
26 ~~(D)(4)~~ enticement of a child as defined in K.S.A. 21-3509, prior to its
27 repeal; ~~(E)(5)~~ indecent solicitation of a child as defined in K.S.A. 21-3510,
28 prior to its repeal, or ~~subsection (a) of K.S.A. 2018 Supp. 21-5508(a), and~~
29 ~~amendments thereto;~~ ~~(F)(6)~~ aggravated indecent solicitation of a child as
30 defined in K.S.A. 21-3511, prior to its repeal, or ~~subsection (b) of K.S.A.~~
31 2018 Supp. 21-5508(b), and amendments thereto; ~~(G)(7)~~ sexual
32 exploitation of a child as defined in K.S.A. 21-3516, prior to its repeal, or
33 K.S.A. 2018 Supp. 21-5510, and amendments thereto; or ~~(H)(8)~~
34 aggravated incest as defined in K.S.A. 21-3603, prior to its repeal, or
35 ~~subsection (b) of K.S.A. 2018 Supp. 21-5604(b), and amendments thereto;~~

1 or any prior laws of this state of similar effect at the time the act was
2 committed.

3 ~~(c) Discovery that the injury or illness was caused by childhood~~
4 ~~sexual abuse shall not be deemed to have occurred solely by virtue of the~~
5 ~~person's awareness, knowledge or memory of the acts of abuse. The person~~
6 ~~need not establish which act in a series of continuing sexual abuse~~
7 ~~incidents caused the injury or illness complained of, but may compute the~~
8 ~~date of discovery from the date of discovery of the last act by the same~~
9 ~~perpetrator which is a part of a common scheme or plan of sexual abuse.~~

10 ~~(d) This section shall be applicable to:~~

11 ~~(1) any action commenced on or after July 1, 1992, including any~~
12 ~~action which would be barred by application of the period of limitation~~
13 ~~applicable prior to July 1, 1992;~~

14 ~~(2) any action commenced prior to July 1, 1992, and pending on July~~
15 ~~1, 1992.~~

16 Sec. 2. K.S.A. 2018 Supp. 60-523 is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its
18 publication in the statute book.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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FRED C. PATTON
50TH DISTRICT

May 6, 2020

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a topic that arose during the consideration of the below bill by the House Committee on Judiciary during the 2020 Session. After considering this bill, I believe a more in-depth consideration of the issues raised by the legislation would be appropriate and desirable before advancing the legislation.

HB 2306 – Extending the time that victims of child sex abuse have to bring a cause of action

HB 2306 was introduced in 2019 by 14 members of the House of Representatives. As introduced, the bill would have amended KSA 60-523, which allows victims of childhood sexual abuse to commence a civil action within three years after turning 18 years of age or within three years from discovering (or when the victim reasonably should have discovered) injury or illness from such abuse, whichever is later. The bill would have replaced these limitations with language allowing such an action to be commenced at any time.

In the House Committee hearing on February 22, 2020, a representative of CHILD USA Advocacy and numerous victims of child sexual abuse, family members of victims, and other citizens testified in support of the bill, stating the bill would eliminate Kansas' statute of limitations for civil claims based on child sex abuse, allowing victims of child sex abuse to pursue civil justice when they are ready. Written testimony supporting the bill was submitted by additional citizens and by representatives of the Kansas Coalition Against Sexual and Domestic Violence, CHILD USA, Metropolitan Organization to Counter Sexual Assault, Kansas County and District Attorneys Association, Children's Advocacy Center of Kansas, and a Kansas attorney.

A representative of the Kansas Catholic Conference testified as a neutral conferee.

A representative of the American Tort Reform Association submitted written opponent testimony, expressing concern regarding the elimination, rather than lengthening, of the statute of limitations, as

well as with possible constitutional issues surrounding possible retroactive application of the bill, in light of Kansas appellate court decisions regarding statutes of repose.

(The testimony offered on HB 2306 may be found on the Legislature's website at:
http://kslegislature.org/li/b2019_20/measures/HB2306/testimony.)

After further consideration, I believe the Kansas Legislature and citizens of Kansas would benefit from the Judicial Council's study of and recommendation regarding HB 2306, particularly with regard to the interplay between the bill's proposed amendments to KSA 60-523 and the statute of repose found in KSA 60-515. See *Shirley v. Reif*, 260 Kan. 514 (1996). The questions raised by the analysis in *Shirley* and similar cases include whether the language of HB 2306 is sufficient, as currently phrased, to accomplish the intent of the proponents (eliminate all time limitations on the filing of such cases), or whether KSA 60-515 also would need to be amended. Another question raised by the bill and the applicable cases is whether the time limitations can be removed retroactively without raising constitutional issues. I would also appreciate study and recommendation on how other states have addressed statute of limitations in childhood sexual abuse actions.

Please let me know if I can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Patton", with a long horizontal flourish extending to the right.

Representative Fred Patton
Chairman, House Committee on Judiciary