

**Representative Ken Ivory** proposes the following substitute bill:

**STATUTE OF LIMITATIONS REFORM AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill provides a window for the revival of civil claims against perpetrators of sexual abuse of a child.

**Highlighted Provisions:**

This bill:

- ▶ allows child sexual abuse victims to bring a civil action against an alleged perpetrator even though the statute of limitations has run;
- ▶ provides a window to age 53 for such actions; and
- ▶ specifies limitations.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

[78B-2-308](#), as last amended by Laws of Utah 2015, Chapter 82

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*Be it enacted by the Legislature of the state of Utah:*



26 Section 1. Section 78B-2-308 is amended to read:

27 78B-2-308. ~~Ĥ~~→ Legislative findings -- ←Ĥ Civil actions for sexual abuse of a child --

27a Window for revival of time

28 barred claims.

28a ~~Ĥ~~→ (1) The Legislature finds that:

28b (a) child sexual abuse is a crime that hurts the most vulnerable in our society and  
28c destroys lives;

28d (b) research over the last 30 years has shown that it takes decades for children and  
28e adults to pull their lives back together and find the strength to face what happened to them;

28f (c) often the abuse is compounded by the fact that the perpetrator is a member of the  
28g victim's family and when such abuse comes out, the victim is further stymied by the family's  
28h wish to avoid the "ugliness";

28i (d) even when the abuse is not committed by a family member, the perpetrator is rarely  
28j a stranger and, if in a position of authority, can bring pressure to bear on the victim to insure  
28k silence;

28l (e) in 1992, when the Legislature enacted the statute of limitations requiring victims to  
28m sue within four years of majority, society did not understand the long-lasting effects of abuse  
28n on the victim;

28o (f) the Legislature, as the policy-maker for the state, may take into consideration  
28p advances in medical science and understanding in revisiting policies and laws shown to be  
28q harmful rather than beneficial; and

28r (g) the Legislature has the authority to change old laws in the face of new information,  
28s and set new policies. ←Ĥ

29 ~~Ĥ~~→ [(1)] ~~Ĥ~~→ (2) ←Ĥ As used in this section:

30 (a) "Child" means a person under 18 years of age.

31 (b) "Discovery" means when a person knows or reasonably should know that the injury  
32 or illness was caused by the intentional or negligent sexual abuse.

33 (c) "Injury or illness" means either a physical injury or illness or a psychological injury  
34 or illness. A psychological injury or illness need not be accompanied by physical injury or  
35 illness.

36 (d) "Molestation" means [~~touching~~] that a person, with the intent to arouse or gratify  
37 the sexual desire of any person:

38 (i) touches the anus, buttocks, or genitalia of any child, or the breast of a female child  
39 [younger than 14 years of age, or otherwise taking];

40 (ii) takes indecent liberties with a child[;]; or [causing]

41 (iii) causes a child to take indecent liberties with the perpetrator or another[~~with the~~  
42 ~~intent to arouse or gratify the sexual desire of any~~] person.

43 (e) "Negligently" means a failure to act to prevent the child sexual abuse from further  
44 occurring or to report the child sexual abuse to law enforcement when the adult who could act  
45 knows or reasonably should know of the child sexual abuse and is the victim's parent,  
46 stepparent, adoptive parent, foster parent, legal guardian, ancestor, descendant, brother, sister,  
47 uncle, aunt, first cousin, nephew, niece, grandparent, stepgrandparent, or any person cohabiting  
48 in the child's home.

49 [(g)] (f) "Perpetrator" means an individual who has committed an act of sexual abuse.

50 [(h)] (g) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or  
51 molestation by an adult directed towards a child.

52 [(f)] (h) "  $\hat{H} \rightarrow$  [f] **Person** [f] [Victim]  $\leftarrow \hat{H}$  " means an individual  $\hat{H} \rightarrow$  victim  $\leftarrow \hat{H}$  who  
52a was intentionally or negligently  
53 sexually abused. It does not include individuals whose claims are derived through another  
54 individual who was sexually abused.

55  $\hat{H} \rightarrow$  [(2)] (3)  $\leftarrow \hat{H}$  (a) A person may file a civil action against a perpetrator for intentional or  
55a negligent  
56 sexual abuse suffered as a child at any time.

57 (b) A person may file a civil action against a non-perpetrator for intentional or  
58 negligent sexual abuse suffered as a child:

59 (i) within four years after the person attains the age of 18 years; or

60 (ii) if a person discovers sexual abuse only after attaining the age of 18 years, that  
61 person may bring a civil action for such sexual abuse within four years after discovery of the  
62 sexual abuse, whichever period expires later.

63 (3) The victim need not establish which act in a series of continuing sexual abuse  
64 incidents caused the injury complained of, but may compute the date of discovery from the date  
65 of discovery of the last act by the same perpetrator which is part of a common scheme or plan  
66 of sexual abuse.

67 (4) The knowledge of a custodial parent or guardian may not be imputed to a person  
68 under the age of 18 years.

69 (5) A civil action may be brought only against a living person who:

70 (a) intentionally perpetrated the sexual abuse;

71 (b) was criminally responsible for the sexual abuse in accordance with Section  
72 76-2-202; or

73 (c) negligently permitted the sexual abuse to occur.

74 (6) A civil action against a person listed in Subsection (5) for sexual abuse that was  
75 time barred as of July 1, 2016, may be brought within 35 years of the victim's 18th birthday, or  
76 within three years of the effective date of this Subsection (6), whichever is longer.

77 (7) A civil action may not be brought as provided in Subsection (6) for:

78 (a) any claim that has been litigated to finality on the merits in a court of competent  
79 jurisdiction prior to July 1, 2016, however termination of a prior civil action on the basis of the  
80 expiration of the statute of limitations does not constitute a claim that has been litigated to  
81 finality on the merits; and

82 (b) any claim where a written settlement agreement was entered into between a  
83 plaintiff and a defendant or perpetrator, unless the settlement agreement was the result of fraud,  
84 duress, or unconscionability. There is a rebuttable presumption that a settlement agreement  
85 signed by the plaintiff when the plaintiff was not represented by an attorney admitted to  
86 practice law in this state at the time of the settlement was the result of fraud, duress, or  
87 unconscionability.