

NOW & NEXT

NYS Legal Developments Alert

NOVEMBER 15, 2022

Why you need to pay attention to NY's Adult Survivors Act, taking effect next week

By Michal Cantor

The floodgates will soon open for claims under NY's Adult Survivors Act.



What's the Impact

- / The ASA provides survivors of adult sexual abuse the opportunity to file civil suit against their abusers, regardless of any applicable statutes of limitation.
- / Survivors may also sue the institutions that allegedly played a role in the abuse they suffered, which poses a new threat of litigation for virtually any business that interfaces with adults.
- / Businesses, organizations, and other institutions across all industries are encouraged to take steps now to prepare for potentially impending ASA litigation.

On November 24, 2022, the one-year lookback window under the New York Adult Survivors Act ("ASA") will open. The ASA, signed earlier this year by Governor Kathy Hochul, provides survivors of adult sexual abuse the opportunity to file civil suit against their abusers, regardless of any applicable statutes of limitation. Although in 2019 New York extended the statute of limitations for certain adult sexual abuse claims to 20 years, it does not apply retroactively to revive

previously time-barred claims as the ASA does. Thus, adult abuse claims that a court previously dismissed on statute of limitations grounds may now be re-filed under the ASA.

The ASA was modeled after the New York Child Victims Act (“CVA”), which opened a revival period¹ during which survivors of childhood sexual abuse were permitted to file civil suits for abuse that occurred countless years prior. While the CVA revived claims of abuse which occurred when the survivor was under eighteen years of age, the ASA presents an opportunity for survivors who were over eighteen years old when their abuse occurred.

Significantly, as was characteristic of the CVA, during the one-year ASA window,² survivors may also sue the institutions that allegedly played a role in the abuse they suffered. However, whereas the defendants in the more than 10,000 CVA lawsuits are primarily religious entities, youth organizations, and other institutions that engage with children, the ASA will pose a new threat of litigation for virtually any business that interfaces with adults. For example, we anticipate that a significant number of ASA lawsuits will be filed by survivors against their former employers under negligence theories of liability (e.g., alleged negligent hiring, training, and/or retention).

Though the CVA cases have been moving slowly through the courts, some rulings have been handed down so far, which will no doubt be instructive for those facing ASA claims. To date, we have seen at least two courts deny motions to dismiss CVA claims for negligent hiring, retention, supervision, and direction.³ It is also worth noting that in some CVA suits that have made it to trial in upstate courts, juries have awarded survivors multi-million dollar verdicts.⁴

Businesses, organizations, and other institutions across all industries are encouraged to take steps now to prepare for potentially impending ASA litigation. These include assessing insurance coverage, including locating policy documents; identifying any and all versions of internal policies and procedures that may have existed over time for addressing internal complaints, specifically allegations of sexual harassment or abuse; and locating files pertaining to any historical complaints of sexual harassment or abuse. Taking these precautions now will better

¹ On August 3, 2020, the one-year CVA window (which was set to expire on August 14, 2020), was extended for one additional year in light of the COVID-19 pandemic.

² The ASA window will close on November 23, 2023.

³ See, e.g., *M.C. v. State*, 163 N.Y.S.3d 741, 753, 2022 WL 322593 (N.Y. Ct. Cl. Jan. 20, 2022) (finding that the complaint adequately pleads a cause of action for negligent hiring, retention, supervision, and direction); and *PB-36 Doe v. Niagara Falls City School District*, 152 N.Y.S.3d 242, 245, 2021 WL 3044998 (Sup. Ct. July 19, 2021) (denying defendants’ motion to dismiss, and citing a Fourth Department case for the proposition that “[a]n employer may be liable for a claim of negligent hiring or supervision if an employee commits an independent act of negligence outside the scope of employment and the employer was aware of, or reasonably should have foreseen, the employee’s propensity to commit such an act.”).

⁴ See, e.g., [Jay Tokasz, Jury awards \\$65 million to woman abused as a girl by YMCA counselor, *The Buffalo News*, Oct. 28, 2022](#); and [Kayla Green, Erie County jury awards \\$25 million to child sex abuse victim in first NYS Child Victims Act jury verdict, *WIBV*, Apr. 1, 2022](#).

position potential defendants to face the wave of ASA litigation that is sure to come over the next year.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Michal E. Cantor

516-832-7634

mcantor@nixonpeabody.com
