



Virginia Creates New Cause of Action for Adult Victims of Sexual Abuse Against a “Person of Authority”

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On March 15, 2023, Virginia Governor Glen Youngkin signed House Bill 1647 into law. The new law amended and reenacted Virginia Code § 8.01-243 to create a civil cause of action for injury to a person 18 years of age or older resulting from sexual abuse by a person of authority and further establishes a statute of limitations of 15 years after the cause of action accrues. The new provision in the statute provides:

... every action for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring when the person was 18 years old or older by a person of authority over a victim shall be brought within 15 years after the cause of action accrues. For the purposes of this subsection, “person of authority” means a person in a position of trust having influence over the victim’s life.

See House Bill 1647 (amending and reenacting Virginia Code § 8.01-243). The law will go into effect on July 1, 2023.

As discussed in this article, the new law will not revive time-barred civil claims of adult victims of sexual abuse. In addition, the General Assembly’s definition of a “person of authority” will likely be the subject of litigation challenges on ambiguity and vagueness arguments. The impact of Virginia’s new cause of action for adult sexual abuse claimants to recover damages against a person of authority will largely be determined by Virginia courts’ treatment of these issues.

The New Law Does Not Revive Time-Barred Claims

In Virginia, the statute of limitations for civil cases involving adult victims of sexual abuse are determined by the date that the assault occurred:

- 2-year statute of limitations applies if the victim was 18 years or older at the time of the assault and the assault occurred before July 1, 2020
- 10-year statute of limitations applies if the victim was 18 years or older at the time of the assault and the assault occurred after July 1, 2020

See Va. Code § 8.01-243(D1). The new law will create a 15-year statute of limitations if the adult victim was sexually abused by a “person of authority.” The new 15-year statute of limitations cannot revive claims that were already time-barred before the effective date of the new law.

Under Virginia law, it is well-established that “[i]f, after a right or remedy is barred by a statute of limitations, the statute be repealed, the bar of the statute as to such right or remedy shall not be deemed to be removed by such repeal.” Va. Code. § 8.01-234; *Kesterson’s Adm’r v. Hill*, 101 Va. 739, 744 (1903) (citations omitted). The fact that the statute of limitations was “amended and reenacted” has no effect on a defendant’s right to the defense of the statute because “the right to set up the bar of a statute of limitations as a defense to a cause of action after the statute has run is a vested right, and cannot be taken away by legislation . . . and . . . it is immaterial whether the action is for the recovery of real or personal property, or for the recovery of

a money demand, or for the recovery of damages for a tort.” *Starnes v. Cayouette*, 244 Va. 202, 208 (1992) (quoting *Kesterson’s Adm’r*, 101 Va. at 743-44 (citation omitted)).

A single, narrow exception to this rule was created by a 1994 amendment to the Virginia Constitution, but the amendment only applies to intentional torts committed by natural persons against minors. *Kopalchick v. Catholic Diocese of Richmond*, 274 Va. 332, 338 (2007) (citations omitted). The 1994 amendment provides that the legislature may retroactively change the statute of limitations for intentional tort claims committed by natural persons against minors. Va. Const., Art. IV, § 14, p. 4. However, at least one Virginia court has held that, regardless of the 1994 amendment to the Virginia Constitution, retroactive revival of an expired statute of limitations under any circumstances violates the United States Constitution and is thus not permissible. See *Ackerman v. Ackerman*, 42 Va. Cir. 103 (Fairfax Cir. Ct. 1997).

Therefore, the new law creating a cause of action for adult victims of sexual abuse against a person of authority will not revive time-barred claims, irrespective of the new 15-year statute of limitations.

Virginia Courts Could Find the New Law’s Definition of a “Person of Authority” is Unenforceable on Ambiguity and Vagueness Grounds

Virginia’s new law defines a “person of authority” as “a person in a position of trust having influence over the victim’s life.” It is likely defendants being sued in civil actions will argue that the law’s definition of “a person of authority” is ambiguous and vague, and consequently violates due process and cannot be enforced.

In interpreting a statute, Virginia courts follow the plain meaning rule. The Court begins with the plain meaning of the statute’s words, and they will interpret the statute according to that plain meaning, unless the language is too ambiguous to have a plain meaning, or unless the plain meaning of the statute produces an absurd result. To say that this is the most important rule in statutory interpretation would be a vast understatement. See, e.g., *RMBS Recovery Holdings I, LLC v. HSBC Bank USA, N.A.*,

297 Va. 327, 339 (2019) (“In our analysis, we seek to give effect to the legislature’s intent in enacting the statute by applying the plain meaning of the language used.” (citation omitted)).

The plain meaning of a “person of authority” – meaning, “a person in a position of trust having influence over the victim’s life” – is more straightforward in the context of a minor. For example, Colorado law provides a more detailed definition of a “position of trust” with respect to sexual abuse to a minor, as follows:

One in a “position of trust” includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties, or responsibilities concerning a minor, including a guardian or someone otherwise responsible for the general supervision of a minor’s welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a minor, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.

CRS 18-3-401(3.5). Colorado’s definition of a “position of trust” likely includes people in positions such as a parent, guardian, doctor or other health care provider, coach, psychotherapist, teacher, tutor, priest, rabbi, tutor, or babysitter.

Conversely, the meaning of a “person of authority” – meaning, “a person in a position of trust having influence over the victim’s life” – is unclear when the sexual abuse victim is an adult. Complicating matters, Virginia’s new law does not provide detailed examples on who has authority over adults. For these reasons, the new law arguably lacks explicit standards for application, rendering enforcement arbitrary and discriminatory.

If the plain meaning leads to absurdity or ambiguity, then Virginia courts are to resort to other sources, mainly legislative history. However, in Virginia, legislative history is typically not as substantial as seen in U.S. Congress. In addition, Virginia courts may look at what motivated the General Assembly to amend a statute. *Ambrogi v. Koonz*, 224 Va. 381,

387-88 (noting that a recent amendment was in response to the interpretation of the statute by the Attorney General). House Bill 1647 was introduced by Delegate Timothy V. Anderson on January 11, 2023. At the February 13, 2023, Senate hearing on the report from the Judiciary, Del. Anderson stated, in part, that the new law gives an additional five years onto the current 10-year statute of limitations if the sexual abuser is a person of authority over the victim's life, such as a pastor or therapist, as opposed to a stranger to the victim. Senator R. Creigh Deeds questioned whether the proposed definition of a person of authority was too broad. In response, Del. Anderson stated that the person of trust could be a teacher, pastor, doctor, or variety of people, but the intent is specifically directed to clergy and "high control groups." Next, Senator Mark J. Peake stated, in addressing Sen. Deeds' question, that every bill must be interpreted by courts to determine if they are in a position of trust and then go through the appeals courts. Sen. Peake noted the new law could specifically refer to clergy, but then the question is whether that person is a member of the clergy. The full discussion lasted less than four minutes. Future litigants will certainly dig deep to find answers that support their client's position on the General Assembly's intent regarding who should and who should not be covered as a "person of authority."

Ultimately, we will need to wait and see how Virginia courts address these arguments after July 1, 2023, when the new law goes into effect and lawsuits are filed on behalf of adult sexual abuse victims against an alleged "person of authority" relying on the 15-year statute of limitations.

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