

2011 HOUSE JUDICIARY

HB 1456

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1456
January 31, 2011
13708

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1456.

Rep. Kathy Hogan: Sponsor, support (see attached 1). Jeff Dunford is the young man who was involved in the situation and he came from California.

Jeff Dunford, Victim: Support (see attached 1a and 1b). There are three ways to file a claim for a victim in the case of sexual abuse. First, you have filing for a sexual assault and battery, where you can file a claim for relief, that's one year after turning 18; second, you can file a personal injury, where if it's beyond the statute of limitations, it's when you discover your injury when a reasonable person has been apprised of facts, such as an attorney that told you that a case exists, or you've had a medical problem, and maybe have been to a number of doctors that gave you the wrong diagnosis, but when you find the correct one, then you've discovered your injury; and lastly, as in the Rose Shanilec case, because of the way the laws are written here, Jeff Anderson's firm filed it under fraud. The statute of limitations was extended because there was concealment. So that's how he's writing that particular case. In my case, I went to Summary Judgment at the district court level, it was dismissed, "the limitation period for bringing this action was extended under 28-01-25 to the plaintiff's 19th birthday. On a sexual assault for relief, that was it, it was done at age 19, it was dismissed. I appealed it and I have the Supreme Court ruling, I had my complaint and it's pretty straightforward. In no. 5, I am requesting a just amount for the lifelong personal injury that I sustained from defendant because of him sexually molesting me as a minor, as in but not limited to Post Traumatic Stress Disorder. I was diagnosed with PTSD in 2006, so I thought I was filing a personal injury claim. But that's not how the court manipulated it and it's pretty for me to see it in black and white. The judge at the district court level took it as a sexually assault and battery case, which isn't how I had filed it. That got flipped. I passed out the judgment in the Supreme Court; it will only take a second. Since we have the one year, so that was that. So now it's discovery. When did I discover I had PTSD and then when was I aware of the facts that a claim existed. Those are the two criteria. Again, when you read the NDCC, it's when you've been apprised of facts like by an attorney or a doctor, not your hairdresser on legal matters. That's really what

happened to me. On #3, Dunford asked a non-lawyer friend in 1988 about the statute of limitations. It was an off the cuff conversation. I was just with a friend, who's not a lawyer, and in fact he gave me the wrong advice and lastly, when did I discover that I had PTSD. In the same paragraph, in the early 1990's I sent a letter confronting him about the alleged abuse. The letter informed Tryhus of problems caused by the alleged abuse. This is the Supreme Court's interpretation. District court had a similar interpretation. Nobody saw the letter. Summary Judgment, all inferences are to go to me. Here we are quoting a letter that nobody has ever seen, and saying that I knew that I had PTSD by sending this letter. The letter never pertained to that; I testified to that but it didn't matter. In fact, PTSD was not known about in 1993, when the letter was sent. I had never even heard about PTSD. One last element to it is in discovery. You have to be a reasonable person that would recognize when they've been injured. In 1993, they deemed I was reasonable with position, but at the time, I was living in the back of a garage, alcoholic, but I was considered reasonable at that time, that I should have understood that I had a case by talking to a layman, and then also that I had PTSD, without ever being diagnosed. We have several cases in here that the Supreme Court cites, Osland v. Osland, Shanilec v. Grand Forks. It's beyond belief unless we are reading different languages. Osland v. Osland was a woman who was actually was able to get discovery several years after the abuse, she was maybe 24. Shanilec v. Grand Forks Clinic that was a malpractice case. Mr. Shanilec actually saw four different doctors before the last doctor finally gave him the correct diagnosis. That's when his discovered began. My discovery began when I sent a letter that nobody's ever seen. In terms of when you write a bill, allowing discovery, you can see there is extremely latitude; a letter that nobody saw constitutes discovery. But writing the law in the HB proposed here is pretty black and white. HB 1456, a couple of things that I saw on line 8, an action for the recovery of damages. That particular term is sexual assault; the term is a claim for relief. If you've been sexually assaulted, you don't need to be proving damages. I think it's pretty much a given. With this particular wording, about damages, I'm going to have to prove I lost income, a therapist, etc. but just by having proved that you were sexually assaulted a claim for relief, on line 10, or if the victim failed to report. If the victim did not report, failed sounds like it's the child of the sexual assault person failed. The only reason they failed is because when you're abused, you've lost all the tools that you need to actually file a case. Frankly, you don't get them back for years and years, if ever. One more thing, notifying the police. Mostly, it's somebody you know, whether it's your stepfather, the priest, medical personnel, or family friends. I would have had a tough time at the beginning, knowing the kids, knowing the mother, to have filed if I only had to go to the police first, as opposed to not. I'm going to put mom's stepfather in jail, as opposed to being notified by an attorney that a case exists, or that your therapist told you. They have three years here; I can tell you that it was impossible for me to get a lawyer. I did have a lawyer firm out of Minneapolis, an exceptionally large firm and he had my case for 20 months and called me back and said it's the first time it's ever happened. We couldn't find co-counsel in ND. Now I have four months before the deadline of two year statute of limitations because I thought I was filing a personal injury claim. It was two years from the diagnosis of

the PTSD. So even three years would not have worked. I don't think I could have found an attorney in ND. I must have called 20 attorneys, I'm sure the law firm did as well. Most attorneys should have gone for this. Jeff Anderson tried to find me an attorney, but they refused to take the case because ND law was so unvictim friendly. Six years I would recommend at a minimum. If you look at the current cases pending now, you've got the Schanilec on the 1970's; mine was from the 1960's. Even if you had had a twenty year statute of limitations, the rules that are there wouldn't have qualified. Just the nature of the crime, you've lost the skills to file and I think you'll find that half the child sexual abuse victims go to their graves without disclosing it, let alone having enough backbone, etc. to file a case, seek out a lawyer and stand in front of people with previous embarrassments that go with it. I don't understand why there is even any statute of limitations. If the one in out of a 1,000 can actually hit a crisis point, then you finally find a therapist, is how it's normally done. If you get your act enough together that you want to file a case, you're one in 10,000 people. Then good luck in finding an attorney. To even have a six year statute of limitations, I don't see why there should be any statute of limitations at all. If you can file a case, bring it forward, and if it's a he said/she said, it's out on summary judgment; it's not like it is going to overload the courts. If you've actually have a case, whether you're 40, 60 which is about the normal age for the few that actually ever file would be doing it. Amnesty, when California changed their law, had a one year amnesty and they had about 600 more civil claims that came forward, I think that extrapolates to about 9 in the population size of California. Delaware just changed their law. They are allowing two years of amnesty for any claimants along the same lines of my case, which were caught up in the exceptionally restrictive law.

Rep. Klemin: I looked this case over that you handed out, did you ever report this to law enforcement.

Jeff Dunford: I did. I reported it in 2009, and there is the other aspect. I reported it to the Fargo Police Dept. and their comment was, don't file the case, you're going to look like a gold digging blab blah blah. We couldn't even determine that you were a patient of his. Of course, it's in the court records. They virtually didn't do anything. The main thing they did do was to work very hard on not having me file the report.

Rep. Klemin: You started your lawsuit in 2008.

Jeff Dunford: I did file the report; and after I filed the case and went through the process, I did go and file a criminal complaint after the civil case.

Rep. Klemin: Following your case.

Jeff Dunford: Yes.

Chairman DeKrey: Thank you. Further testimony in support.

JoAnn Brager, Vice President of Public Policy for ND Association for the Education of Young Children: Support (see attached 2).

Chairman DeKrey: Thank you. Further testimony in support of HB 1456.

Tim Hathaway, Executive Director of Prevent Child Abuse ND: Support (see attached 3).

Chairman DeKrey: Thank you. Further support of HB 1456.

John Hubbard: Support, I am a long-time friend of Jeff Dunford. I've seen what's happened in Jeff's case. I knew his abuser; he had tremendous power and balance. The man had a large professional dental practice, he was a member of the school board, he was a prominent investor in businesses in the community, and for all intents and purposes a pillar of the community. In his case, he has his claim, there is a second claimant, there is an office manager for over 10 years that said this was occurring with many names listed. There is a police report from 1986; there was an investigation. The gentleman in question left town, never to come back after that police report, and yet Jeff has had a very difficult time getting any kind of redress for this because the law in ND is so unfriendly. As he analyzed it, they looked at a one year extension after you're 18 under the present law, when a minor who's been molested can bring the civil action one year till they're 19, and then the only other way is the discovery rule. The court made it very clear; it was 5 to nothing in the Supreme Court that under present ND law, that the standard is this reasonable person would have known that they had a case. Well, how reasonable is someone who might have been molested for 8 – 10 year, by someone like their dentist, that's on the school board, how easily can they bring a lawsuit when they're 19. In Jeff's case, he was homeless for years, alcoholic, had very severe psychological problems. Somehow he had enough strength to eventually seek some counseling and it didn't take the counselor very long to discover that he had PTSD from what happened to you when you were a child; even though it wasn't a repressed memory, he knew that this had occurred. But just the ability to fight back, to seek some justice, is so crushed by the dynamics of those kinds of imposition. I certainly support this bill; I just thought that there has to be something better, I'm not the expert to say exactly what it should be, but I think this would be a huge improvement over existing law.

Chairman DeKrey: Thank you. Further testimony in support of HB 1456.

Ken Sorenson, AG's office: There is only one reason that I'm here. There's a technical error in the bill. It's in line 14, it refers to a violation of chapter 12.1-16, which is the homicide chapter in the Code. Our sex offenses are 12.1-20 and child sexual performances is chapter 12.1-27.2.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. We will take a look at HB 1456.

Rep. Hogan: We've done some minor changes in the amendment. Page 1, line 8, replace "an action for the recovery of damages", with "a claim for relief". On page 1, line 10, replaced "failed to" with "did not". Page 1, line 14, replace "chapter 12.1-16" with "chapters 12.1-20 or 12.1-27.2" (see attached 4). I move the amendments.

Rep. Delmore: Second the motion.

Rep. Koppelman: I am sympathetic with the intent of the bill, I'm just wondering about the issue of the reporting, we're extending it to three years after it was reported. If that's 50 years after the incident, it's just that open-endedness that there seems to be no closure, is a mild concern to me. The only thing I can think of that's as bad as or worse than being a victim or perpetrator of this kind of abuse is maybe being falsely accused of it, and I know that's an issue out there too. What are your thoughts on that?

Rep. Hogan: That's the struggle with this issue. In fact, most children who are sexually abused don't report it for many years. They don't disclose it for many years. That's the struggle, most states have, in fact, have gone to this more open-ended. I think the issue is what the triggering factor is when the clock starts is difficult. The gentleman was not happy to have to report it to law enforcement, that in fact that he had been abused. That's uncomfortable for some people. When we struggled with the drafting of this bill, the issue is what the triggering timeframe is; it is not uncommon for victims of child sexual abuse to not disclose for 30 years. The gentleman this morning did not discuss his specific situation. But the realities of it are, that's a situation where there were an estimated 400 children abused and I did discuss this with the perpetrator's receptionist. The people in the office knew that this abuse was going on, and there have never been any consequences. It tears your heart out to think that many children could have been seriously abused with no consequence. This might not be the best way, but I'd be open to other ways because it's a justice issue for me.

Chairman DeKrey: How does this affect, if at all, the statute of limitations on bringing a civil action; or is this strictly limited to a claim of child sexual abuse.

Rep. Klemin: As I understand it, you would still have the regular statute of limitations that would apply. But we have some exceptions to that in ND law. One is if you are a minor at the time, it is on hold until you reach the age of majority plus one year. So you have until age 19 to do that. The second thing, and this was addressed in the Supreme Court opinion, is the discovery rule. You have in this case, it was two years after you knew or reasonably should have known that you were injured. That acted to extend the statute of limitations for the gentleman that was here by a couple of decades I think; from the 1950's to the 1990's. They looked at the evidence in that case and said you knew or reasonably should have known that you were injured long before you started this lawsuit. That's the reason he couldn't go forward. Then he went and reported it to law enforcement a year after he started his lawsuit. This

bill is, and I don't see that the amendments are changing anything in the bill, going to give you seven years from the time of the sexual abuse, which if you're 17, then that would mean that you could go to age 24; or three years after you report it to law enforcement, or you still have the discovery rule, which lengthens it way beyond most of these, like it did in the case of the gentleman that was here. Two years after he knew, or reasonably should have known, that he was injured. That's the discovery rule and that's the rule that allows some kinds of claims to be brought many, many years later. Didn't he say that this happened to him in the 1960's; they looked at the evidence in that case and they determined that he knew or should have known he was injured in the 1990's? Well 30, 40, even 50 years later, it doesn't make any difference, this bill will allow you to report it to law enforcement and then you've got three more years to bring a suit, which addresses the problem that Rep. Koppelman's looking at, when does it ever end. It is going to be against that person's estate 50 years from now, or all the people and witnesses gone or dead; there has to be an end to these matters some time. I think the discovery rule already adding on 30 years maybe that should be enough.

Rep. Hogan: The issue about the discovery rule was that he discovered it and shared it with a friend, and that was a bit of the concern with the discovery explanation, his friend didn't know that he should file a civil action. That was a bit of the confusion.

Rep. Klemin: But the discovery rule relates to the person who was injured. When did he know or reasonably should have known that he was injured. He knew it when he shared it with a friend. It's not up to the friend to say, go file your lawsuit.

Rep. Hogan: But he did not know that he had a civil action. That was the piece that was missing. I think with victims of sexual abuse, the basic disclosure is so hard, let alone get to any kind of process of law. Typically that takes years of counseling. That's why these get so complicated. So the issue is, are there any options? It's interesting to look at other states, because they have opened these doors in a lot of different ways.

Rep. Klemin: In a lot of other situations where we have limitations on bringing a civil action, the discovery rule doesn't apply at all. You either do it or you lose it. The Supreme Court in that opinion set out the reasons for having finality someday. The way this bill is written now, there's never any finality.

Rep. Hogan: Is there anything that you think we can do with this bill to address the specific issue of child sexual abuse, because it's not defined in law. Do you see an alternative to this, like a compromise? I'd appreciate Rep. Klemin's ideas, because he knows the law. We should look at it and see if there is some other way to do this. I think this is an issue that hasn't been discussed by the Legislature at all.

Chairman DeKrey: Not at all, that I remember.

Rep. Hogan: I think it's an issue that, in many states, they've really looked at this issue and I'll do some additional research and try to bring it into ND law.

Rep. Koppelman: It appears to me, just looking at the bill that it really deals with civil damages. We're looking at lawsuits, not talking about criminal culpability under the law. That might be something to revisit in talking with the AG, or whoever; if the objective is to sue somebody and get money. If the objective is to see to it that a perpetrator is held responsible, that's something different perhaps.

Rep. Hogan: We actually made changes on the criminal side maybe 10 years ago. We've done a lot of work on the criminal side, but it's on the civil side that we've never done anything. That's the difference.

Rep. Hogan: I withdraw the motion.

Rep. Delmore: I withdraw the second to the motion.

Chairman DeKrey: I will appoint a subcommittee of Rep. Maragos (chair), Rep. Kingsbury, and Rep. Hogan.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1456
February 7, 2011
14139

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1456.

Rep. Hogan: Thank you to everyone who helped me with this. We've gone through and changed the things that we thought needed to be changed. Particularly important, is the page 1, line 12, removing lines 10-11. Page 1 line 12 will read "plaintiff knew or reasonably should have known of an injury resulting from alleged childhood sexual abuse". My understanding is that it is putting the discovery rule into century code on this issue. We're essentially clarifying how child sexual abuse should have been discovered.

Chairman DeKrey: Rep. Hogan moves the Hogan amendment.

Rep. Maragos: Second the motion.

Rep. Hogan: Just for your information, I did run this by the AG's office and asked if they had any concerns, and they haven't gotten back to me, so I think that's a good sign.

Rep. Boehning: How long after the fact that they've been abused, can they come back and sue; do you have any timeline issues. How is this going to affect the individual that testified? If something happens when you're under 18, and all of a sudden you decide at 35 you're going to sue because everybody else is, what are the timelines?

Rep. Hogan: The triggering point will be when he discovered the incident happened. It could be a situation that he was in therapy, or something triggered the understanding that he was sexually abused; and it's seven years from that point of discovery that the plaintiff knew or reasonably should have know of the injury. So the issue is what precipitated his acknowledgement of the injury, because it is not uncommon for people not to disclose for long periods of time.

Rep. Klemin: That's correct; it is that you reasonably should have known of an injury. He may have known of child sexual abuse earlier, but that doesn't mean that he knew he had been injured somehow, such as in the case of the person who testified, he didn't know he had an injury until long afterwards, but I think he knew of the abuse earlier. In that court case he had, that is what the court said; they applied the discovery rule to his situation and found that he was time barred because it was way after that he started the lawsuit.

Rep. Boehning: So if this happened when the guy was 7-8 years old, he finally discovers at the age of 50, that he was injured when he was 7 or 8, you can still go back and sue at that point. So basically, there is no closure of the case until everybody is dead and the estate has been settled, then they can go back and sue the estate to recoup costs.

Chairman DeKrey: Or he should have known. It's not wide open.

Rep. Boehning: It's kind of muddled up, all of a sudden you discover that he may have had oil and you found out that he abused you, it could get kind of tricky in court if you have to go back to an estate.

Rep. Klemin: It could be that there isn't anyone left to sue. If you sue somebody who died long ago and the estate has been distributed, and there is a statute of limitation on making claims against estates too. Then he may still have a claim but he just can't collect on it because there is nothing to collect on.

Rep. Koppelman: You said someone could know that they were sexually abused but not know that they were injured. What is non-injurious sexual abuse? Is it by definition an injury?

Rep. Klemin: I guess I don't know; I'm not an expert in that area. All I know is, you might know of an incident, but you don't know that you were injured by it until later, when it somehow comes up. I think that's what happened in the gentleman's case here. It seems like he did know of that abuse, but not that he was injured.

Chairman DeKrey: I can see the scenario where a special needs person would have known he had sex with someone, but maybe not know he was injured until later in life.

Rep. Hogan: It's quite common for sexual abuse victims that they are actively using alcohol or drugs. Often times they don't understand that their alcohol and drugs are triggered by the sexual abuse until they have been sober for an extended period of time. That's a typical example, I think, of why you don't recognize the cause of the injury until quite a bit later. That's the hard part about these cases, that's why I appreciate the solution. I think it's reasonable, because when do you know that that's what triggered the injury. I appreciate the language.

Rep. Klemin: All of these cases are going to be dependent on the facts of each specific case and what the fact finder determines whether you knew or reasonably should have known, it's an objective standard, well you should have known this a long time ago and now it's too late.

Chairman DeKrey: We have the Hogan amendment before us; we will take a voice vote. Motion carried. We now have the bill before us as amended, what are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended.

Rep. Brabandt: Second the motion.

14 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Hogan

February 7, 2011

VR
2/7/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1456

Page 1, line 8, replace "an action for the recovery of damages" with "a claim for relief"

Page 1, line 9, remove "commission of the"

Page 1, remove lines 10 and 11

Page 1, line 12, replace "enforcement authorities" with "plaintiff knew or reasonably should have known of an injury resulting from alleged childhood sexual abuse"

Page 1, line 14, replace "chapter 12.1-16" with "chapter 12.1-20 or 12.1-27.2"

Renumber accordingly

Date: 2/7/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1456

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0420.02001 03000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Brabandt

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Hogan

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1456: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1456 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "an action for the recovery of damages" with "a claim for relief"

Page 1, line 9, remove "commission of the"

Page 1, remove lines 10 and 11

Page 1, line 12, replace "enforcement authorities" with "plaintiff knew or reasonably should have known of an injury resulting from alleged childhood sexual abuse"

Page 1, line 14, replace "chapter 12.1-16" with "chapter 12.1-20 or 12.1-27.2"

Renumber accordingly

2011 SENATE JUDICIARY

HB 1456

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1456
3/14/11
Job #15364

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the statute of limitation on civil actions involving childhood sexual abuse

Minutes:

There is attached testimony

Representative Kathy Hogan – District 21 – Introduced the bill – see written testimony.

Senator Sitte – Asks what is happening in other states.

Rep. Hogan – Says some states have very open time frames with no limitations. Some have 3 to 5 years; it's really all over the board.

Senator Nelson – Asks about the changes that were done in the House.

Rep. Hogan – Said there was a great deal of discussion on which code this should be in. She goes on to say there very few lawyers that will take these cases because of the silence. This will help both victims and lawyers.

Jeffrey Dunford – Relates his case of being sexually molested as a child by his dentist. He says nearly all states have some legislation about the limitations. He goes on to say there is not a big rush to file cases because there is no statute of limitations. Currently he says it is one year to file once you have reached the age of majority, no one files, even into their 30's and 40's. He says in ND there have been tens of thousands of children that have been sexually molested here and only two cases in the last few years have attempted to file. He said it is the nature of the crime and what it does to the child, they are incapable of coping for the rest of the lives let alone filing a case, even with therapy it doesn't happen. He describes the filing of a claim and his own case. He says his Supreme Court case will be used as a disadvantage to plaintiffs. He doesn't think the 7 years is a reasonable amount of time either but it is better than it was. He says there should be no statute of limitations. He said this bill is a slight improvement.

Senator Sitte – Asks what it is under a criminal statute.

Dunford – Replies, it is 6 years once the police have been notified.

JoAnn Brager – Vice President of Public Policy for the ND Association for the Education of Young Children – See written testimony.

Tim Hathaway – Prevent Child Abuse ND – In support of this bill.

Senator Sitte – Asks him what % come forward in 7 years.

Hathaway – Did not know but would get some information for her.

Opposition – 0

Close the hearing on 1456

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1456
3/22/11
Job #15838

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the statute of limitation on civil actions involving childhood sexual abuse.

Minutes:

Senator Nething – Chairman

Committee work

Committee discusses the amendment that was brought in.

Senator Olafson moves to adopt the amendment

Senator Lyson seconds

Verbal vote – all yes

Senator Olafson moves a do pass as amended

Senator Sitte seconds

Discussion

Senator Nelson mentions that she spoke with someone that wanted an unlimited statute of limitations. They discuss how difficult it would be to remember a long ways back and to recreate what happened. Senator Sitte says we're moving in the right direction and we do this for the children.

Roll call vote – 6 yes, 0 no

Motion passes

Senator Sitte will carry

PROPOSED AMENDMENT TO HB 1456

Page 1, line 10, replace “of an injury” with “that a potential claim exists”

Date: 3/22/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HS6

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Olafson Seconded By Senator Sitte

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Sitte

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1456, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1456 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "of an injury" with "that a potential claim exists"

Renumber accordingly

2011 TESTIMONY

HB 1456

Testimony
Regarding HB 1456
Judiciary Committee
January 31, 2011
By Kathy Hogan

Chairman Dekrey and members of the Committee, My name is Kathy Hogan, I represent District 21 which is central Fargo. I urge your support of HB 1456.

HB 14⁵⁶~~55~~ is a result of a contact I had when I was campaigning door to door in the fall. At one door, a gentleman asked if I would help him address a serious injustice in the ND legal system. He described his concern for a friend who had been sexually abused as a child by a professional. The young man, Jeff Dunford, had not only been abused as a child but also felt that the ND judicial system had not assured him justice. This bill is attempting to allow child sexual abuse civil actions to be initiated within three years of a formal report of the situation to law enforcement. I am pleased that the individuals involved in the situation are here to share their experience.

As a freshman legislator, this has been an interesting process in learning the system. I would like to thank both Jessica and Legislative Council for working with me to find the appropriate placement of this proposed legislation. We had significant discussion on the correct method to incorporate this legislation and I look forward to working with you.

Chairman Dekray and members of the committee, I am willing to answer any questions.

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2009 ND 212

Jeffrey Allen Dunford, Plaintiff and Appellant
v.
Dr. Trueman E. Tryhus, Jr., Defendant and Appellee

No. 20090178

Appeal from the District Court of Cass County, East Central Judicial District, the Honorable Frank L. Racek, Judge.

AFFIRMED.

Opinion of the Court by Crothers, Justice.

Jeffrey Allen Dunford, self-represented, 1819 Myrtle Avenue, San Diego, CA 92103, plaintiff and appellant.

Kim E. Brust, 406 Main Avenue, Suite 200, P.O. Box 2686, Fargo, ND 58108-2686, for defendant and appellee.

Dunford v. Tryhus

No. 20090178

Crothers, Justice.

[¶1] Jeffrey Dunford appeals the district court's summary judgment to Dr. Trueman Tryhus, Jr. We affirm, concluding the district court did not err in determining Dunford's claim was barred by the statute of limitations.

I

[¶2] Tryhus practiced dentistry in Fargo from 1958 through 1993. Dunford was born in 1954 and became a patient of Tryhus in the mid-1960s. Dunford alleges Tryhus sexually abused him between 1965 and 1969.

[¶3] In 1988, Dunford asked a nonlawyer friend in the Fargo area for information regarding the statute of limitations on sexual abuse claims. Dunford was informed the statute of limitations was two years from the incident of abuse. In the early 1990s, Dunford sent a letter confronting Tryhus about the alleged abuse. The letter informed Tryhus of problems caused by the alleged abuse, and Tryhus acknowledged receiving the letter. At his deposition, Dunford claimed to have vividly remembered the alleged abuse since its occurrence.

[¶4] On March 24, 2006, Dunford met with Dr. Margaret Drew, a clinical psychologist from La Jolla, California. Dr. Drew diagnosed Dunford with post-traumatic stress disorder, but no further counseling was undertaken. Dunford commenced this action on February 28, 2008, and Tryhus moved for summary judgment on February 13, 2009, asserting Dunford's claim was barred by the statute of limitations. Following a hearing, the district court determined Dunford's claim was time-barred and granted summary judgment to Tryhus. Dunford timely filed this appeal.

II

[¶5] The standard of review for summary judgment is well-established, and this Court has explained:

"Summary judgment is a procedural device for the prompt resolution of a controversy on the merits without a trial if there are no genuine issues of material fact or inferences that reasonably can be drawn from the undisputed facts, or if the only issues to be resolved are questions of law. Johnson v. Nodak Mut. Ins. Co., 2005 ND 112, ¶9, 699 N.W.2d 45. A party moving for summary judgment must show there are no genuine issues of material fact and the case is appropriate for judgment as a matter of law. Green v. Mid Dakota Clinic, 2004 ND 12, ¶5, 673 N.W.2d 257. On appeal, we view the evidence in the light most favorable to the opposing party, and that party must be given the benefit of all favorable inferences. Ruggles v. Sabe, 2003 ND 159, ¶2, 670 N.W.2d 356. We review a district court's decision to grant summary judgment de novo on the entire record. Fetch v. Quam, 2001 ND 48, ¶8, 623 N.W.2d 357."

Witzke v. City of Bismarck, 2006 ND 160, ¶7, 718 N.W.2d 586.

A

[¶6] We explained the purpose and characteristics of statutes of limitations in Tarnavsky v. McKenzie County Grazing Ass'n:

"Statutes of limitation are designed to prevent plaintiffs from sleeping on their legal rights and bringing stale claims to the detriment of defendants. See Burr v. Trinity Med. Ctr., 492 N.W.2d 904, ¶10-11 (N.D. 1992). Statutes of limitations are a legal bar to a cause of action and begin to run when the underlying cause of action accrues. Abel v. Allen, 2002 ND 147, ¶10, 651 N.W.2d 635. The determination of when a plaintiff's cause of action has accrued is generally a question of fact, but if there is no dispute about the relevant facts, the determination is for the court. Id. at ¶11. A cause of action accrues when the right to commence the action comes into existence and can be brought in a court of law without being dismissed for failure to state a claim. Id. at ¶12. We have recognized statutes of limitation ordinarily began to run from the commission of the wrongful act giving rise to the cause of action, see BASF Corp. v. Symington, 512 N.W.2d 692, 695 (N.D. 1994), and '[a]n injury usually arises contemporaneously with the wrongful act causing the injury.' Huber v. Oliver County, 529 N.W.2d 179, 182 (N.D. 1995) (quoting Erickson v. Scotsman, Inc., 456 N.W.2d 535, 537 (N.D. 1990))."

2003 ND 117, ¶9, 665 N.W.2d 18.

[¶7] A claim's statute of limitations begins to run when the underlying cause of action accrues. Tarnavsky, 2003 ND 117, ¶9, 665 N.W.2d 18. Claims of sexual abuse carry the same two-year

statute of limitations as assault and battery claims. Peterson v. Huso, 552 N.W.2d 83, 84 (N.D. 1996); N.D.C.C. § 28-01-18(1). "However, under Section 28-01-25, N.D.C.C., if a person who is entitled to bring an action is under eighteen years old when the cause of action accrues the period of minority is not part of the time limited for the commencement of the action, and the statutory limitations period can be extended for not more than one year from that person's eighteenth birthday." Osland v. Osland, 442 N.W.2d 907, 908 (N.D. 1989). Absent another exception, the statute of limitations required Dunford to commence this action no later than December 1975, two years after his nineteenth birthday.

B

[¶8] Dunford argues the district court erred in dismissing his case on statute of limitations grounds because he commenced this action within two years of discovering his injury. Dunford claims he did not discover his injury until he was diagnosed with post-traumatic stress disorder in March 2006. Citing the discovery rule, Dunford claims the commencement of his lawsuit in February 2008 was within the two-year statute of limitations for sexual abuse claims because his cause of action did not accrue until March 2006. For the purposes of this case, we assume without deciding that the discovery rule applies.

[¶9] We described the discovery rule in Wells v. First American Bank West:

"In Osland v. Osland, 442 N.W.2d 907, 908 (N.D. 1989), this Court said that generally the statute of limitations begins to run from the commission of the wrongful act giving rise to the cause of action. We have also recognized, however, this rule is often harsh and unjust, which is why so many courts have adopted the discovery rule. Shanilec [v. Grand Forks Clinic, Ltd.], 1999 ND 165, ¶ 11, 599 N.W.2d 253]. 'The discovery rule is meant to balance the need for prompt assertion of claims against the policy favoring adjudication of claims on the merits and ensuring that a party with a valid claim will be given an opportunity to present it.' Id. (citing Buck v. Miles, 971 P.2d 717, 722 (Haw. 1999)). See also MDU Resources Group v. W.R. Grace and Co., 14 F.3d 1274, 1277 (8th Cir. 1994) (citing Wall v. Lewis, 366 N.W.2d 471, 473 (N.D. 1985); Iverson v. Lancaster, 158 N.W.2d 507 (N.D. 1968)) ('To determine the point at which any statute of limitations begins to run, North Dakota applies the discovery rule.').

"The discovery rule is an exception to the limitations and, if applicable, determines when the claim accrues for the purpose of computing limitations. The discovery rule postpones a claim's accrual until the plaintiff knew, or with the exercise of reasonable diligence should have known, of the wrongful act and its resulting injury. Courts generally apply the discovery rule when it would have been difficult for the plaintiff to have learned of the negligent act or omission that gave rise to the legal injury. Bates v. Texas State Technical Coll., 983 S.W.2d 821, 828 (Tex. Ct. App. 1998)."

1999 ND 170, ¶¶ 9-10, 598 N.W.2d 834.

[¶10] Dunford testified he has always had vivid memory of the abuse, satisfying the requirement that he be aware of the wrongful act. The remaining issue is when Dunford knew or should have known of the injury he suffered. When Dunford knew or should have known is an objective question, focusing on whether he "has been apprised of facts which would place a reasonable person on notice that a potential claim exists." Wall v. Lewis, 393 N.W.2d 758, 761 (N.D. 1986).

Further, the discovery rule requires only that the plaintiff be aware of an injury; it does not require the plaintiff to know the full extent of the injury. Erickson v. Scotsman, Inc., 456 N.W.2d 535, 539 (N.D. 1990) (citing Gregory v. Union Pacific R. Co., 673 F.Supp. 1544, 1547 (D. Nev. 1987)).

[¶11] Dunford inquired as to the applicable statute of limitations for sexual abuse claims in 1988 and wrote a letter to Tryhus in the early 1990s. Dunford's letter confronted Tryhus and listed problems he was having because of the abuse. Dunford also has experienced nightmares since he was a child, and he reports that by the mid-1990s he knew the nightmares were caused by the alleged abuse. This evidence establishes Dunford discovered his injury no later than the mid-1990s.

[¶12] Drawing all inferences in favor of Dunford, no dispute exists that he discovered his injury in the mid-1990s and that he commenced this action in February 2008. Because Dunford did not file his sexual abuse claim within two years of discovering his injury, the district court did not err in granting Tryhus' motion for summary judgment.

III

[¶13] We affirm, concluding the district court properly granted Tryhus summary judgment on statute of limitations grounds.

[¶14]

Daniel J. Crothers
Mary Muehlen Maring
Carol Ronning Kapsner
Dale V. Sandstrom
Gerald W. VandeWalle, C.J.

IN DISTRICT COURT, Cass COUNTY, NORTH DAKOTA

Jeffrey Allen Dunford

Plaintiff,

Dr. Trueman E. Tryhus Jr.

Defendant.

COMPLAINT

Civil No. _____

1. The plaintiff was a permanent resident of Fargo, North Dakota from birth in 1954 to about the fall of 1975.
2. The defendant Dr. Trueman E. Tryhus who practiced dentistry at Park Towers, 501 South 7th St. in Fargo became my dentist in the mid 1960's.
3. The Defendant Dr. Trueman E. Tryhus repeatedly sexually molested me as a minor while I was left alone in his dental chair in one of his operatory rooms.
4. It's been within 2 years that my first contact, concerning being sexually abused as a child by a caregiver, occurred with sexual abuse attorneys, mental health professionals, adult survivors of child abuse group meetings and my primary doctor.
5. I am requesting a just amount for the life long personal injury that I sustained from defendant because of him sexually molesting me as a minor, as in but not limited to Post Traumatic Stress Disorder (PTSD).

Dated 2-11, 2008

My Signature

1819 Myrtle Ave
Street Address

San Diego, Ca 92103
City/State/Zip

Monday, January 31, 2011

HB 1456: Statute of limitations on civil actions involving childhood sexual abuse

To: Representative DeKrey and members of the house judiciary committee

My name is JoAnn Brager and I am the Vice President of Public Policy for the North Dakota Association for the Education of Young Children. NDAEYC represents approximately 400 members who work with or on behalf of children ages birth to eight years of age.

NDAEYC's mission is "To serve and act on behalf of the needs, rights and education of all young children." On behalf of the rights of the sexually abused young children in ND, NDAEYC strongly supports HB 1456.

This bill will give voice to victims of childhood sexual abuse who are too young to know that the perpetrator is committing a vile act against their body, mind and soul. Sexual abuse has life-long consequences for the victim not just for a limited time. Adults need to do what we need to in order to protect our youngest citizens.

I will answer any questions you may have.

January 31, 2011

House Bill 1456

Representative DeKrey and Members of the House Judiciary Committee,

My name is Tim Hathaway, Executive Director of Prevent Child Abuse North Dakota. My organization exists for the purpose of eliminating child maltreatment in its various forms.

HB 1456 will extend North Dakota citizens ability to seek justice for crimes committed against their person. According to the *International Journal of Child Abuse & Neglect* the psychological distress of victims includes anxiety, depression, troubles concentrating and irritability. Certain victims suffer from post-traumatic stress disorder, some relive the abuse psychologically while others have dulled emotions or become hyper-vigilant.

It is important to adopt this bill foremost so that no perpetrator of the crime of sexual abuse can ever feel as though he or she is safe from prosecution or liability.

Moreover, the essence of child sexual abuse is secrecy. Children are often threatened horribly to maintain silence about the issue. The fact that abuse is most often committed by a family member or close relation (between 85 and 90% of abuse) may mean that even years after abuse has ceased the individual may be in close contact with the perpetrator. These circumstances make the process of discovery, disclosure and preparation for public exposure through civil action, painful, socially risky and emotionally costly. Extending the statute of limitations allows survivors the time to gather resources and meet the challenge of civil litigation.

This bill will add protection for ND citizens and reduce protections for perpetrators of a universally abhorrent crime. I urge you to support passage of HB 1456.

Thank you and I will stand for questions.

Prepared for: Rep. Kathy Hogan

Prepared by: Jessica Braun, Legislative Intern, House Judiciary Committee

PROPOSED AMENDMENT TO HOUSE BILL 1456

Page 1, line 8, replace "an action for the recovery of damages" with "a claim for relief"

Page 1, line 10, replace "failed to" with "did not"

Page 1, line 14, replace "chapter 12.1-16" with "chapters 12.1-20 or 12.1-27.2"

Renumber accordingly

**Testimony
Regarding 1456
Judiciary Committee
March 14, 2011
Representative Kathy Hogan
District 21**

Chairman Nething, members of the Senate Judiciary Committee, I am pleased to introduce you to HB 1456. I introduced this bill at the request of a constituent. His friend had been sexually abused as a child by a dentist. This abuse resulted in significant emotional problems. As an adult as he attempted to confront his abuser, he discovered that ND was silent on the issue of civil action in child sexual abuse cases.

This bill to clarify the process and conditions for civil actions in cases of child sexual abuse. This bill defines the process and time-lines for a victim of child abuse to file a civil action. Currently, ND Century Code is silent on this issue. The language in the bill was written based on the current court rules regarding discovery of injury. All but two states in the Union have clarified legal procedures for civil actions in child sexual abuse cases over the last ten years.

Thank you for your consideration of this bill and I would be willing to answer any questions.

Monday, March 14, 2011

HB 1456: Statute of limitations on civil actions involving childhood sexual abuse

To: Senator Nething and members of the senate judiciary committee

My name is JoAnn Brager and I am the Vice President of Public Policy for the North Dakota Association for the Education of Young Children. NDAEYC represents approximately 400 members who work with or on behalf of children ages birth to eight years of age.

NDAEYC's mission is "To serve and act on behalf of the needs, rights and education of all young children." On behalf of the rights of the sexually abused young children in ND, NDAEYC strongly supports HB 1456.

This bill will give voice to victims of childhood sexual abuse who are too young to know that the perpetrator is committing a vile act against their body, mind and soul. Sexual abuse has life-long consequences for the victim not just for a limited time. Adults need to do what we need to in order to protect our youngest citizens.

I will answer any questions you may have.