

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 175 law offices in 80 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2016
Stradley Ronon Stevens & Young, LLP
All rights reserved.

Pennsylvania House Bill 1947: Nonprofit Entities Should Prepare for Possible Retroactive Extension of Child Sex Abuse Statute of Limitations

On April 12, by a vote of 180-15, the Pennsylvania House of Representatives approved House Bill 1947, a bill that, if ultimately enacted, would mean major changes to the state's child sex abuse laws and serious immediate and future consequences for all institutions in the Commonwealth that serve children.

The bill would prospectively remove the limitation period applicable to certain child sex abuse crimes. Currently, the statute of limitations for these crimes runs out when the victim reaches the age of 50, but the bill would do away with that hurdle. Notably, the change would not apply to criminal allegations of endangering the welfare of children, and, thus, those claims would still be time-barred after alleged victims reach 50 years old.

The bill would also eliminate the defenses of sovereign immunity for Commonwealth parties and governmental immunity for local agency parties in cases of gross negligence. While a significant change, the bill would still protect these entities from child sex abuse claims alleging ordinary negligence — a protection, even if limited, that the bill does not

(continued on page 2)

The State of Real Estate Tax Exemption for Nonprofits in the Garden State

New Jersey is taking a hard look at the exemption from real property taxes enjoyed by nonprofit operations, specifically health care facilities and operations, and that look is translating into changes in the costs of operating such facilities. It began with a June 30, 2014, opinion of the tax court in AHS Hospital v. Town of Morristown, which involved an appeal by AHS Hospitals of a determination by Morristown that AHS's facilities were no longer entitled to an exemption from real property taxes on the basis that many operations conducted on the AHS property as part of running the hospital were actually for-profit, including the gift shop, privately operated restaurants and cafes, areas used or leased by for-profit doctors' groups, and parking garages. On appeal, the court agreed that the hospital's tax-exempt status should be revoked given the way the hospital was operated and, further, questioned whether a basis for an exemption still exists the way it did in the 1800s, when the tax exemption was codified. A further appeal was taken, but the town and the hospital settled before that appeal was resolved.

(continued on page 3)

Pennsylvania House Bill 1947 *(continued from page 1)*

extend to nonprofits and other nongovernmental entities facing civil actions. Moreover, the bill would not affect the current damages caps for claims against these governmental entities: \$250,000 for one plaintiff, or \$1 million in the aggregate, for claims against state parties, and \$500,000 in the aggregate for claims against local agency parties.ⁱ

Most significantly, the bill would also retroactively extend the window to bring civil actions arising from childhood sexual abuse from 12 to 32 years after the claimant reaches age 18. This would give alleged victims until they are 50 years old to bring these actions, even if they would be time-barred under Pennsylvania's current statute of limitations.

The bill still needs to pass through the Pennsylvania State Senate, which will reconvene on May 9. Governor Tom Wolf has told news outlets he plans to sign the bill if it reaches him.ⁱⁱ

If the bill becomes law, it will have serious financial and administrative ramifications for all child-serving nonprofit entities in Pennsylvania. Defending civil actions alleging child sex abuse can drain the resources of nonprofit entities. Nationally, Catholic institutions defending sex abuse allegations have suffered more than \$2 billion in losses, causing 10 dioceses, three archdioceses and two religious orders to file for bankruptcy.ⁱⁱⁱ Moreover, allegations of child sex abuse, even if based on the conduct of individuals long gone from the entities, can lead to diminished public trust and, thus, reduced financial contributions from the public.^{iv}

Similar legislation in other states has led to many claims, often against deceased persons, alleging abuse so long ago that the administrators who would have known about it are not available and any records documenting it have been lost or destroyed under record retention policies. Indeed, under the proposed statutory scheme, it is entirely possible that an abuse claim could be brought immediately before the claimant turns 50 years old, based on events that allegedly occurred more than 40 years prior. Without insurance records, personnel files or testimony from administrators in place at the time, a nonprofit entity may be left without any means to piece together what happened or verify the victim's story.

To avoid this problem going forward, nonprofit entities should consider changing their policies to require longer document retention periods.

Nonprofit entities should also review the older files to be sure they have addressed all allegations of abuse. Nonprofit entities



Mark E. Chopko



Bridget C. Giroud

For more information, contact Mark E. Chopko (mchopko@stradley.com or 202.419.8410) or Bridget C. Giroud (bgiroud@stradley.com or 215.564.8740).

should address allegations proactively and with empathy — for the benefit of both the victim and the community.^v Not only is this the right thing to do, but it may prevent contentious litigation and reduce costly reputational damage.

There is serious reason to doubt the constitutionality of any revival of lapsed civil claims in Pennsylvania. In 2012, the Pennsylvania Task Force on Child Protection specifically did not recommend revival of the statute of limitations “because of the potential for staleness of evidence and possible constitutional concerns.”^{vi} Still, nonprofit entities should prepare for the potentially significant administrative challenges associated with actions that could be brought under this proposed legislation, and they should start now to study the policies and procedures that will be impacted going forward.

ⁱ 42 PA. CONS. STAT. ANN. § 8528(b); 42 PA. CONS. STAT. ANN. § 8553(b).

ⁱⁱ See Angela Coulombis & Caitlin McCabe, *Pa. House votes to extend window for child sex-abuse claims*, PHILLY.COM (April 14, 2016), http://articles.philly.com/2016-04-14/news/72298256_1_civil-statute-limitations-bishopaccountability.

ⁱⁱⁱ See Mark E. Chopko, *Protecting Vulnerable Clients from Abuse*, RISK MANAGEMENT ESSENTIALS, Summer 2009, at 4, 4, <http://www.nonprofitrisk.org/library/newsletter/050609.pdf>; Ed Flynn, “Spotlight” on Diocesan Ch. 11s, ABI JOURNAL, March 2016, at 28, 56.

^{iv} See Chopko, *supra* note iii, at 4-5.

^v See generally *id.* at 6-7.

^{vi} JOINT STATE GOVERNMENT COMMISSION, CHILD PROTECTION IN PENNSYLVANIA: PROPOSED RECOMMENDATIONS OF THE TASK FORCE ON CHILD PROTECTION 28, <http://www.childprotection.state.pa.us/Resources/press/2012-11-27%20Child%20Protection%20Report%20FINAL.pdf>.

The State Real Estate Tax Exemption

(continued from page 1)

The tax court's ruling undoubtedly caused heart palpitations for more than a few hospital and nonprofit executives throughout the state, and caused other municipalities to focus their attention on similar tax-exempt facilities within their own boundaries. Princeton University's tax-exempt status, for example, was called into question in a suit brought by local citizens. A final decision in that case is not available, but in an interim ruling, the court held that the university had the burden of proving its continued entitlement to the exemption, rather than requiring the plaintiffs to provide otherwise. This creates further unwelcome precedent for nonprofits.

To counter the growing uncertainty, a legislative fix was proposed: the Hospital Community Service Contribution Bill, S-3299, introduced by Sen. Stephen Sweeney on Dec. 7, 2015. It would require nonprofit hospitals to pay \$2.50 per bed per day to the municipality in which they are located. The funds would defray municipal costs of police, fire and other public safety costs, or be used for tax relief. Gov. Christie declined to sign the bill into law, however, which prompted over a dozen municipalities to challenge the tax-exempt status of properties owned or operated by nonprofit hospitals. On March 18, Gov. Christie proposed that a two-year moratorium be placed on the tax assessments for all hospitals previously exempt, while a state-appointed commission would study the state's property tax law and issue proposals to resolve the issue in a manner that is fair for the hospitals, the municipalities and the taxpayers. The proposal is supported by the New Jersey Hospital Association but has not moved forward. On April 14, Assemblyman Herb Conaway introduced a narrower version of the moratorium and



Catherine M. Ward

For more information, contact Catherine M. Ward at cward@stradley.com or 856.321.2402.

would freeze only property tax challenges against hospitals. As of the date of this article, the bill remains in the Assembly Housing and Community Development Committee.

It is also worth noting that while the [AHS Hospital](#) decision focused solely on the "acute care hospital" section of the tax-exemption statute, N.J.S.A. 54:4-3.6, the analysis and critique which the town of Morristown and the tax court conducted in arriving at their respective conclusions could be applied to other situations involving nonprofit operations. In the real estate law context, an aggressive municipality seeking to regain lost real property taxes could conceivably seek to extend the court's analysis to other, non-health care activities by challenging existing exemptions on a case-by-case basis. Or, based on the unfolding drama in Princeton Township, local residents tired of high taxes could challenge the tax exempt status of a university's endowment. A successful challenge would result in a significant drop in real estate taxes and would provide further impetus to other municipalities and residents to re-examine the tax exempt status of other ostensibly non-profit operations. From this perspective, the AHS Hospital opinion is worthwhile reading.

Stradley Ronon's Nonprofit & Religious Organizations Practice Group

Mark E. Chopko, chair	mchopko@stradley.com	202.419.8410
Craig R. Blackman	cblackman@stradley.com	215.564.8041
Kevin R. Boyle	kboyle@stradley.com	215.564.8708
Linda Ann Galante	lgalante@stradley.com	215.564.8075
Thomas G. Harris	tharris@stradley.com	484.323.1341
Christine M. McDevitt	cmcdevitt@stradley.com	215.564.8136
Michael E. Roynan	mroynan@stradley.com	610.640.5805
William R. Sasso	wsasso@stradley.com	215.564.8045
Robert J. Stern	rstern@stradley.com	484.323.1348
Tara M. Walsh	twalsh@stradley.com	484.323.1357