

The New Exception to the Immunities Provided to Municipalities Under the Pennsylvania Political Subdivision Tort Claims Act

By Tricia M. Ambrose¹

The newest exception to immunity – sexual abuse - may be the one that has received the least amount of attention, but has the most significant impact on immunity provided to your municipalities and could have a far reaching impact on exposure to your local municipalities.

What is House Bill 962 and How Does It Affect Municipalities?

2019 Act 87 House Bill 962 was passed by Governor Tom Wolf on November 26, 2019 and changes the way that sexual abuse of minors is handled in Pennsylvania. HB 962 provides that a municipality may be liable for the acts of the agency or any of its employees for conduct which constitutes an offense under 18 Pa.C.S. 5551(7), if the injuries to the plaintiff were caused by the actions or inactions or omissions of the local agency. The offenses in 18 Pa.C.S. 5551(7) include offenses perpetrated against a minor in the nature of sex trafficking, sexual servitude, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, institutional sexual assault, aggravated indecent sexual assault or incest. HB 962 also defines a minor as an individual who is twenty-three (23) years of age or younger – extending the age of minority by five (5) years.

Even more concerning about HB 962, is the inapplicability of the damage cap. All of the other eight (8) exceptions to immunity under the Tort Claims Act have a \$500,000 damage cap, regardless of the value of the actual damages. Under HB 962, there is no damage cap for the exception related to sexual abuse. As such, damages in these cases could be astronomical.

Lastly, the Tort Claims Act requires that the party provide the municipality with notice of the potential suit within six (6) months of the date of the incident. The six (6) month notice requirement does not apply to this new exception and there is almost no statute of limitations associated, especially for sexual abuse of a person under eighteen (18). Generally, a plaintiff has two (2) years to commence a lawsuit, or with the case of a minor, two (2) years from the date of majority. Under HB 962, if the individual bringing suit is under eighteen (18) at the time of the abuse, they have thirty-seven (37) years from the age of majority to bring suit. If the individual is

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between eighteen (18) and twenty-three (23) at the time of the abuse, the individual has until reaching age thirty (30) years to bring a lawsuit.

While this sounds like bad news, HB 962 did not strip away everything that the immunity of the Tort Claims Act provides. At the outset, the waiver of immunity only applies to very specific offenses. Not every act that is sexual in nature can give rise to liability. The actions must be criminal, and they only apply to very specific crimes. In addition, like immunity for the other eight (8) exceptions, the municipality cannot be liable for intentional or reckless conduct of its employees. The local agency can only be liable for “causing” the sexual abuse if the conduct of its employees constituted negligent acts or omissions. While there is no further information – and no Court guidance yet – as to what will be considered negligent actions or omissions, it is likely that this exception will assume other provisions of the Tort Claims Act. For example, the municipality will likely not be liable simply on the theory of respondeat superior. Like the *Monell* claims that can be asserted against your municipality in federal actions, this exception will likely require more than just proving the actions of the employee to establish liability against your municipality. A plaintiff may have to prove that the municipality was on notice of particular behavior and failed to act, either by way of failing to intervene or by not having proper training or policies. However, in federal actions, in order to find liability against the municipality, a plaintiff must prove that the municipality acted with deliberate indifference. Here, only mere negligence, which is a much lower standard, is required.

What Can We Take Away From This New Exception?

While HB 962 was likely passed as a result of the Church scandals and the Sandusky scandal, this could have far reaching affects past churches and schools and could expose your municipality to civil liability in a variety of ways:

- A plaintiff could claim the Police Department did not adequately investigate a claim for sexual abuse allowing it to continue to happen;
- One of your police officers arrests a nineteen (19) year old, and in exchange to not file/drop charges, the minor performs sexual acts for the officer;
- A “consensual” sexual relationship between a supervisor and a subordinate, under the age of twenty-three (23); Sexual harassment in the workplace in the form of sexual favors for continued employment or other workplace benefits – “quid pro quo” to an employee under the age of twenty-three (23).

While it is up to each municipality to best determine how to prevent and eliminate risk, one way to prevent such claims is to continue to promulgate good polices and more importantly, train your employees on those policies. Policies and training on preventing and reporting sexual

harassment will provide your employees with clear direction on how to handle circumstances when they are a victim of, or a witness, to this type of behavior. Further, policies on interpersonal intimate relationships in the workplace, whether it is permitted and if so, in what circumstances are important. If you are going to allow relationships in the workplace, ensure there are procedures of disclosure and documentation of same to avoid problems that may arise if that relationship ends. Further, always treat reports of sexual abuse and harassment seriously and do your due diligence when investigating any claims of sexual abuse and harassment.

Lastly, because this exception is so new, we do not have any cases yet where potential plaintiffs have asserted a negligence claim based on sexual abuse. Therefore, we do not yet have guidance from the Courts on how this exception will be applied. We can expect to see cases in the coming months asserting this exception.

In conclusion, having good training and policies on sexual harassment and hostile work environment could eliminate the risk of the applicability of this immunity exception to your municipalities.