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Cassidy Moon

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New York Adult Survivors Act: A Retroactive Opportunity for Accountability and Justice

On November 24, 2022, the New York Adult Survivors Act (“ASA”) claim revival period began, providing adult survivors of certain sexual offenses with a one-year opportunity to retroactively file civil claims against their abusers that were otherwise barred by the 20-year statute of limitations.^[1] The ASA follows similar revival statutes in New Jersey,^[2] California,^[3] and New York itself.^[4] It grants a legal remedy to survivors of sexual violence who missed their first opportunity to seek justice^[5] and seeks to hold powerful abusers, like Donald Trump, accountable for their actions.^[6]

In 2019, the New York State legislature extended the statute of limitations for certain sexual offense lawsuits from five years to 20 years, recognizing the need to provide survivors with sufficient time to pursue justice against their abusers.^[7] However, this amendment to the statute was not retroactive; that is, it only applied to new cases, not cases that had been time-barred by the shorter statute of limitations.^[8] The New York Adult Survivors Act was enacted to fill this gap by temporarily suspending the statute of limitations for civil lawsuits against parties accused of certain adult sexual offenses.^[9] It permits cases which would ordinarily be time-barred by the 20-year statute of limitations to be brought if filed during the one-year look-back window, which began November 24, 2022.^[10]

The ASA follows the Child Victims Act of 2019 (“CVA”), which provided a similar revival period for child sexual abuse lawsuits.^[11] The CVA saw more than 10,000 lawsuits filed,^[12] resulting in hundreds of millions of dollars in settlements and judgements against individuals, religious institutions, and other organizations.^[13] Meaningful differences in the statutes indicate that the ASA may ultimately yield more lawsuits than the CVA.^[14] Notably, the ASA provides for employer liability in cases where the offending incident involved the workplace,^[15] resulting in suits filed against institutions and organizations like Atlantic Records,^[16] NBCUniversal Media,^[17] the New York State Attorney General’s Office,^[18] and New York Attorney General Letitia James herself.^[19] It similarly allows hospitals, jails, and other institutional settings to be sued for assaults against people in their care or control.^[20] To date, more than 750 women are planning on suing New York State prisons, while 40 women are expected to sue Columbia University gynecologist Dr. Robert Hadden.^[21] Furthermore, the Speak Out Act recently went into effect, which invalidates non-disclosure agreements in sex abuse cases nationwide.^[22] This prevents powerful people accused of sexual assault from silencing their accusers, allowing these survivors to finally come forward and pursue justice.^[23]

While numerous high-profile cases have already been filed under the ASA against individuals like actor Bill Cosby^[24] and former Jeffrey Epstein associate Leon Black,^[25] none are as notable as writer E. Jean Carroll's suit against former president Donald Trump.^[26] In 2019, Carroll accused Trump of raping her in a Bergdorf Goodman dressing room in the mid-1990s; he promptly denied the claim, calling Carroll a liar and implying she was not attractive enough to be sexually assaulted.^[27] While a sexual offense claim was barred by the statute of limitations at the time, Carroll did sue Trump for defamation based on his response to her allegations.^[28] The ASA subsequently opened the door for Carroll to sue Trump under CPLR § 214-j as well, which she filed on November 24, 2022, the day the revival period began.^[29]

On January 13, 2023, Judge Lewis A. Kaplan of the District Court for the Southern District of New York denied Trump's motion to dismiss and upheld the ASA under the State Constitution.^[30] Kaplan stated that a claim revival statute, such as the ASA, is consistent with the New York Due Process Clause so long as it is "a reasonable measure to address an injustice." Here, the Legislature identified the injustice as New York's insufficient statutes of limitations with respect to adult sexual assault lawsuits; the measure reasonably addresses this injustice by temporarily expanding the statutes of limitations for these offenses.^[31] The Legislature approved this statute nearly unanimously, and the Southern District of New York court subsequently stated that "it is not the function of the courts to second guess the Legislature as to the existence of a serious injustice."^[32]

Having failed to dismiss the suit, Trump will go to trial against Carroll regarding the veracity of her assault claims beginning in April.^[33] The ASA is expected to provide thousands of other New Yorkers like Carroll their day in court as they seek long awaited justice against their abusers.^[34] In the wake of the #MeToo movement, this statute is a pertinent step towards holding perpetrators accountable for their actions and eradicating sexual violence.^[35]

[1] N.Y. C.P.L.R. § 214-j.

[2] N.Y. S.B. 66, 244th Leg. Sess. (N.Y. 2021).

[3] Ashley Cullins, *As New York Suspends Time Constraints On Sexual Abuse Claims, a Wave of Lawsuits Arrive In Courts*, The Hollywood Reporter (Jan. 13, 2023), <https://www.hollywoodreporter.com/business/business-news/new-york-adult-survivor-act-lawsuits-1235299416/>.

[4] See Child Victims Act of 2019, N.Y. C.P.L.R. § 214-c.

[5] S.B. 66 (N.Y. 2021).

[6] *Governor Hochul Signs Adult Survivors Act*, Governor Kathy Hochul (May 24, 2022), <https://www.governor.ny.gov/news/governor-hochul-signs-adult-survivors-act>.

[7] S.B. 66 (N.Y. 2021).

[8] Governor Kathy Hochul, *supra* note 6.

[9] § 214-j.

[10] *Id.*

[11] Misyrlena Egkolfopoulou, *NY Law Opens Way for Flood of Sex-Abuse Suits, No Matter How Old*, Bloomberg Law (Dec. 9, 2022).

[12] Cullins, *supra* note 3.

[13] Egkolfopoulou, *supra* note 11.

[14] Anne Hayes, *Lawyers expect thousands of cases will be filed by sex abuse victims due to new NY state law*, Syracuse.com (Dec. 5, 2022).

[15] Cullins, *supra* note 3.

[16] Egkolfopoulou, *supra* note 11.

[17] *Id.*

[18] Cullins, *supra* note 3.

[19] *Id.*

[20] Sonia Moghe, *Flood of lawsuits expected as window opens for adult survivors to sue in New York for sexual abuse*, CNN (Nov. 24, 2022).

[21] *Id.*

[22] Egkolfopoulou, *supra* note 11.

[23] *Id.*

[24] *Id.*

[25] Hayes, *supra* note 14.

[26] *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 185507 (S.D.N.Y. Jan. 13, 2023).

[27] Benjamin Weiser, *Writer's Lawsuit Accusing Trump of Rape Can Proceed, Judge Rules*, New York Times (Jan. 13, 2023).

[28] *Id.*

[29] *Id.*

[30] *Carroll*, No. 22-CV-10016 (LAK) at 8.

[31] *Id.* at 7.

[32] *Id.* at 8.

[33] Weiser, *supra* note 25.

[34] Governor Kathy Hochul, *supra* note 6.

[35] *Id.*