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Schools face millions in **Child Victims Act** payments, but proposed state relief is stalled

Stephen T. Watson; The Buffalo News, N.Y.

Jul. 30—A proposed \$200 million state fund meant to help public schools and voluntary foster care agencies cover the costs of resolving **Child Victims Act** lawsuits remains stalled in the State Legislature, more than a year after the bill was introduced.

Some school districts and their advocates have called for New York to set aside money to at least partially reimburse their expenses in these legal settlements. They argue students today shouldn't be penalized for purported sexual misconduct by teachers and other school employees from decades ago.

"Justice should have been delivered at the time, and that's the real problem here," said Assembly Member Bill Conrad, a Town of Tonawanda Democrat and longtime teacher who backs the fund.

Skeptics agree with the general idea, but say setting aside a pool of state money now could take the districts' insurance carriers off the hook or unduly influence the outcome of settlement negotiations. Further, they say, it is not necessarily a priority at a time when the state faces looming budget deficits.

"It's too early, because districts don't know their financial liability until these cases are settled. So we're years away from figuring out the total cost to any individual district," said State Sen. Sean Ryan, a Buffalo Democrat.

Even a \$200 million fund wouldn't go very far.

People making claims of long-ago sexual abuse filed at least 180 lawsuits under the act against public school districts in Western New York alone, a Buffalo News analysis found. The statewide total is far greater still.

Area districts have reached settlements in those cases requiring payments of \$1 million or more — over \$17 million, in the case of several dozen lawsuits that accused just one former Ken-Ton teacher of blatant, repeated abuse of students in his classroom.

"Numerous districts have CVA claims still pending that are uninsured," said Julia M. Hilliker, a lawyer who represents school districts in this litigation. "And school boards and their administrators are very concerned, for this year and next year, to the extent that they resolve or otherwise have to deal with the CVA lawsuits and keep their schools running on budget."

Schools face many lawsuits

Then-Gov. Andrew M. Cuomo signed the **Child Victims Act** into law in 2019. It changed the civil statute of limitations for child sex abuse from age 23 to age 55.

The law also included a "look-back window," allowing survivors from decades ago to sue their accused abusers or the institutions that allowed the abuse to happen.

This window — originally set at one year, and later extended to two years because of the Covid-19 pandemic — opened in August 2019 and closed in March 2021.

During the two year look-back period, lawyers filed more than 10,000 claims against various institutions.

Beside the Catholic Church and the Boy Scouts, schools were a common target of CVA legal filings.

In the eight counties of Western New York, just over 200 CVA lawsuits were filed against public school districts, private schools and former school employees, a Buffalo News review of court filings found. About 180 of the complaints named public schools.

Kenmore-Town of Tonawanda faced 48 CVA lawsuits, the most here, followed by Buffalo, with 24.

A Buffalo schools spokesman declined to respond to detailed questions about the claims because the litigation is ongoing.

It is not just large urban and suburban districts: Holland Central School District is named in nine CVA lawsuits, all alleging sexual abuse by the same former teacher, the late Carl Penziul, more than 40 years ago.

"Our concern, again, is not in any way, shape or form to suggest that victims shouldn't be made whole, but that this could have a really bad toll on districts," said Jay Worona, deputy executive director and general counsel for the New York State School Boards Association. "And when I say a bad toll on districts, keep in mind, we're talking about educational opportunities for students."

Full impact unknown

Most **Child Victims Act** lawsuits remain active. But some cases have settled for significant amounts of money.

Nearly 40 men accused Ken-Ton officials of enabling decades of abuse by Arthur F. Werner, a former social studies teacher. The lawsuits claimed Werner molested fifth-grade boys at Herbert Hoover Elementary School, sometimes in full view of other students, between 1965 and the late 1980s.

Werner never was criminally charged and has denied the accusations.

The Ken-Ton School Board in June 2022 agreed to pay \$17.5 million to settle the 35 remaining lawsuits that claimed abuse by Werner.

Ken-Ton taxpayers must bear the full cost because, according to the district, a forensic investigation failed to turn up insurance policies that would cover the abuse claims. The district took \$7.5 million from reserves and borrowed the rest.

Ken-Ton officials said it made more sense to settle the Werner lawsuits rather than risk higher awards at trial.

The Amherst Central School District in 2021 paid a \$1 million, out-of-pocket settlement to a 51-year-old woman who claimed Jack M. Koch, a school attendance officer and assistant principal, abused her in 1986 when she was 16 and attending Amherst High School.

District officials determined the insurance policy in place when the abuse purportedly occurred was with a company that was liquidated in the 1990s.

"The older the cases are, the less likely it is that the district has documentation of who its insurance carrier was," said Hilliker, who has represented Ken-Ton and Amherst. "And even if it has documentation on that, in many instances the insurance carrier is bankrupt, or out of business, and there's not a successor identified. Or, even if there is, the policy limits from back in, say, the '60s and '70s are so low that they really don't make a significant impact in current-day cases."

'We need some relief'

Niagara Falls faces 23 **Child Victims Act** lawsuits, and all remain active, Superintendent Mark Laurrie said.

Extensive forensic analysis found the district has at least partial insurance coverage for 21 of the 23 claims, he said, which cover abuse accusations from the 1960s to the 2010s.

The district's lawyers estimate Niagara Falls faces up to \$30 million in potential settlement costs above and beyond what insurance will cover, according to Laurrie. Whenever those lawsuits are settled, Niagara Falls will have to borrow much of this expense.

"And what are we going to use to pay the bond back? We're going to use the reserve and the the Foundation Aid money," Laurrie said, referring to a form of state education funding. "So you're kind of robbing Peter to pay Paul for these cases."

Laurrie and representatives of other districts say the claims raised in the lawsuits are disturbing, and that they support efforts, as the **Child Victims Act** intended, to compensate survivors for the suffering they endured at the hands of their abusers.

But, they argue, current students and district residents shouldn't see reduced spending on vital academic services as a result.

"On one hand, I completely understand the victims. I feel for them," Laurrie said. "On the other hand, we need some relief."

That's why they are pushing the state to set aside money for districts facing these claims.

A bill introduced by Assemblywoman Jen Lunsford — a Democrat from suburban Rochester — in 2022 and again this year would set up a \$200 million fund to reimburse some expenses for public schools and voluntary foster care agencies.

To qualify, the institutions must show a "good-faith" effort failed to turn up insurance coverage, and the settlement would place a "substantial burden" on the entities' finances.

The bill has languished, with Conrad saying this year's extended negotiations over the state budget and the Seneca gaming compact, among other issues, made it difficult to get traction.

It gained a sponsor in the State Senate this year, but the bill has nowhere near the support it needs.

"We don't necessarily see this going in the direction that we would like to see it go in, that would properly protect all parties — victims and districts," Worona said.

Obstacles to passage

Ryan, whose State Senate district includes Ken-Ton, has not signed on as a co-sponsor of the bill.

He raises several problems. For one, he said the state shouldn't take any action allowing insurance carriers to escape responsibility for covering CVA claims.

Second, he said setting up a defined pot of money for districts' expenses could lead to larger settlement requests. That's why, Ryan said, he wants any fund delayed until all such lawsuits are resolved.

"We also don't want to set up a system where insurance companies can continue to dodge school districts and to have the school districts just say, 'Well, the state will pay,' " he said.

Another issue is that the state, previously flush with federal Covid-19 relief aid, now faces projected budget deficits in coming years.

Reimbursing CVA settlements must vie with other spending priorities among lawmakers.

"There's going to be some things that we're going to have to have some very adult conversations about, financially," Conrad said.

It is a statewide issue, officials noted, but not every school district is affected to the same degree. For example, the Clarence and Lancaster school districts face one **Child Victims Act** lawsuit each.

"Some districts have had no claims. And they don't want state aid being diverted. So there's nothing close to a uniform opinion from school districts," Ryan said. "The opinion is predictable, based on your financial liability."

In another sign of the bill's so-far-dim prospects, Gov. Kathy Hochul's office declined to say where she stands on it.

"Governor Hochul will review all legislation that passes both houses of the Legislature," a spokesperson emailed The News.

--- Index References ---

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News Subject: (Crime (ICR87); Criminal Law (ICR79); Economic Policy & Policymakers (IEC69); Economics & Trade (IEC26); Education (IED85); Legal (ILE33); Liability (ILI55); Public Finance (IPU60); Sexual Misconduct & Crimes (ISE01); Social Issues (ISO05))

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