

ASSEMBLY THIRD READING

AB 2014 (Maienschein)

As Amended May 4, 2020

Majority vote

SUMMARY:

Extends the statute of limitations for criminal offenses involving the misuse of sperm, ova, or embryos in assisted reproduction technology.

Major Provisions

- 1) Extends the statute of limitations for a criminal offense relating to the misuse of sperm, ova, or embryos in assisted reproduction technology from three years from the time that the offense occurred, to one year from the discovery of the offense.
- 2) Specifies that the statute of limitations proposed by this bill would only apply to offenses committed on or after January 1, 2021, and to crimes for which the statute of limitations that was in effect before January 1, 2021, has not expired as of January 1, 2021.

COMMENTS:*Statute of Limitations:*

The statute of limitations requires a prosecution to be initiated within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant.

The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and finality. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses may die or otherwise become unavailable, and physical evidence can become unobtainable or contaminated.

Fertility Fraud Cases:

Although the crimes are rare, the offense of using or implanting reproductive material in a manner that is inconsistent with the will of the donor is one that, by its very nature, is difficult to detect at the time the offense occurs. The typical offense is not likely to be discovered until a person discovers a previously-unknown familial relationship through genetic testing. Such testing may not occur for years or even decades after the moment when a doctor or medical professional fraudulently implanted sperm or an embryo without the consent of the donor. This bill would allow a criminal complaint to be filed within one year of the discovery of the offense and would not require that a criminal complaint be filed within three years of the commission of the fraudulent implantation. This would appear to be consistent with other extended limitation periods for offenses that are unlikely to be discovered until some number of years after the offense is committed.

According to the Author:

"Making the decision to have a child through Assisted Reproductive techniques is monumental to a couple, and having to experience this type of fraud can be a massive violation of the personal, fiduciary, and ethical realms. While this is an illegal practice in California, there is a glaring deficiency that the legislature can address. Current statute of limitations provides a 3 year window after commission of the offense to be prosecuted; however, it is common for victims to discover this way after the fact. For example, a case in Indiana was uncovered ranging from 26-40 years after the fraud occurred, which would mean this misconduct could not be prosecuted under California law. By changing the statute of limitations to 3 years from discovery, we can provide victims with a viable option for seeking justice."

Arguments in Support:

Crime Victim's United is in support of this legislation.

Arguments in Opposition:

According to *California Attorneys for Criminal Justice*: "This bill would extend the statute of limitations for crimes involving the misuse of sperm, ova or embryos. The current limitations period is three years, but AB 2014 would extend this period for forty years or more.

"By using the word, "knowingly," this statute requires the prosecution to prove that the person using the assisted reproduction technology actually knew that the donor had not consented to the way the sperm, ova or embryo were used. In addition, the person using the assisted reproduction technology must have actually known that the recipient of implanted sperm, ova or embryos had not consented to the implantation.

"The best evidence of whether someone actually knew whether consent had been given is the records of the fertility clinic where the procedure was performed. Either there is a written consent form on file, or there is not.

"However, as time passes, records can disappear. Computer storage devices can be damaged or lost or their files can be erased. Paper records can be lost or destroyed. And of course, human memory degrades over time."

FISCAL COMMENTS:

Unknown. The bill is keyed non-fiscal by the Legislative Counsel.

VOTES:**ASM PUBLIC SAFETY: 6-0-2**

YES: Jones-Sawyer, Bauer-Kahan, Diep, Kamlager, Gabriel, Santiago

ABS, ABST OR NV: Lackey, Wicks

UPDATED:

VERSION: May 4, 2020

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