

Date of Hearing: April 6, 2021

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 1455 (Wicks) – As Amended March 26, 2021

As Proposed to be Amended

SUBJECT: SEXUAL ASSAULT BY LAW ENFORCEMENT OFFICERS: ACTIONS
AGAINST PUBLIC ENTITIES: STATUTE OF LIMITATIONS

KEY ISSUES:

- 1) SHOULD CLAIMS ARISING OUT OF AN ALLEGED SEXUAL ASSAULT BY A LAW ENFORCEMENT OFFICER BE EXEMPTED FROM THE CLAIM PRESENTATION REQUIREMENT OF THE GOVERNMENT CLAIMS ACT?
- 2) SHOULD CERTAIN CLAIMS ARISING OUT A PAST SEXUAL ASSAULT BY A LAW ENFORCEMENT OFFICER THAT ARE OTHERWISE TIME-BARRED BE REVIVED?
- 3) SHOULD THE TIME ALLOWED TO BRING AN ACTION ALLEGING SEXUAL ASSAULT BY A LAW ENFORCEMENT OFFICER BE EXTENDED TO WITHIN 10 YEARS AFTER THE DATE OF JUDGMENT IN A CRIMINAL CASE, OR WITHIN 10 YEARS AFTER THE OFFICER IS NO LONGER EMPLOYED BY THE AGENCY, WHICHEVER IS LATER?

SYNOPSIS

Under existing law, an adult victim of sexual assault who wishes to bring a civil action must do so within the later of the following two timeframes: within 10 years from the last occurrence of alleged assault or attempted assault, or within three years from the date when the plaintiff discovered, or reasonably should have discovered the injury or damage suffered resulted from the assault or attempted assault. This bill seeks to address the special problem that occurs when a sexual assault survivor has been sexually assaulted by an on-duty police officer who has the power and authority to threaten the survivor of the assault with arrest, retaliation, or violence if the survivor files a complaint against the law enforcement officer or agency. The bill modifies existing law in three ways. First, the bill would eliminate the usual “claim presentation” requirement that, under the Government Claims Act, is a prerequisite for bringing a cause of action against a public entity or public employee. Second, the bill would modify and extend the statute of limitations for sexual assault committed by a law enforcement officer by, among other things, allowing the victim to delay bringing the action until after the officer is no longer employed by the law enforcement agency. Third, the bill would revive otherwise time-barred claims for sexual assault by a law enforcement officer. According to the author, these changes address a survivor’s quite reasonable fear that law enforcement officers could use their power to threaten, intimidate, or even falsely arrest the survivor who brings an action. The bill is supported by Consumer Attorneys of California, California Women’s Law Center, National Association of Social Workers, and NextGen California. There is no opposition at the time of this writing. The author will take technical and clarifying amendments in this Committee. Those amendments are reflected in the bill summary and analysis below.

SUMMARY: Revives otherwise time-barred claims arising out of an alleged sexual assault by a law enforcement officer, as specified; modifies the statute of limitations claims arising out of an alleged sexual assault by law enforcement officer; and exempts such claims from all state and local government claim presentation requirements. Specifically, **this bill:**

- 1) Exempts from all state and local government claim presentation requirements any claim arising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred while the officer was employed by a law enforcement agency.
- 2) Provides, notwithstanding any other law, that the time for commencement of a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer, if the alleged assault occurred while the officer was employed by a law enforcement agency, shall be the later of either of the following dates:
 - a) Within 10 years after the date of judgment in a criminal case if the action arises out of the same set of operative facts as the criminal case brought against the officer.
 - b) Within 10 years after the law enforcement officer is no longer employed by the law enforcement agency that employed the officer when the alleged assault occurred.
- 3) Notwithstanding 2), above, revives a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer if all of the following are true:
 - a) The alleged sexual assault occurred on or after the plaintiff's 18th birthday while the officer was employed by a law enforcement agency.
 - b) The claim has not been litigated to finality or compromised by an executed written settlement agreement.
 - c) The claim would otherwise be barred because the applicable statute of limitations, any state or local government claim presentation deadline, or any other applicable time limit has expired.
- 4) Provides that claims revived pursuant to 3), above, may be commenced if filed within either of the following periods of time:
 - a) Ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.
 - b) Three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

EXISTING LAW:

- 1) The Government Claims Act sets forth the general procedure, including prescribed time limits, for the presentation of claims as a prerequisite to commencement of actions for money or damages against local public entities. (Government Code Sections 901, 905, and 910, *et seq.* All further references are to this code unless otherwise noted.)

- 2) Defines “Public entity” to include the state, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. (Section 811.2.)
- 3) Defines “sexual assault” to mean any of the crimes described in Sections 243.4, 261, 262, 264.1, 286, 288a, or 289 of the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes. (Code of Civil Procedure Section 340.16 (b).)
- 4) Provides that in any civil action for recovery of damages suffered as a result of sexual assault of an adult, the time of commencement of the action shall be the later of the following:
 - a) Within ten years from the date of the last act, attempted act, or assault with intent to commit an act, of sexual assault against the plaintiff.
 - b) Within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with intent to commit an act, of sexual assault against the plaintiff. (Code of Civil Procedure Section 340.16 (a).)
- 5) Revives any claim seeking to recover more than \$250,000 dollars in damages arising out of a sexual assault or other misconduct of a sexual nature by a physician occurring at a student health center between January 1, 1988, and January 1, 2017, that would otherwise be barred before January 1, 2020, solely because the applicable statute of limitations has expired. Provides that an otherwise time-barred cause of action may proceed if already pending in court on October 2, 2019, or, if not filed by that date, may be commenced between January 1, 2020, and December 31, 2020. Specifies however, that this provision does not revive any claim that was litigated to finality, or settled between the parties, before January 1, 2020. Provides, however, that these provisions do not apply to a claim brought against a public entity. (Code of Civil Procedure Section 340.16 (c).)
- 6) Provides that where a different statute of limitations is specifically applicable to the public entity, and except as provided in Sections 930.6 and 935, any action against a public entity upon a cause of action for which a claim is not required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within the time prescribed by the statute of limitations that would be applicable if the action were brought against a defendant other than a public entity. (Section 945.8.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: This bill seeks to address the problems that occur when a sexual assault survivor has been sexually assaulted by an on-duty police officer who has the power and authority to threaten the survivor of the assault with arrest, retaliation, or violence if the survivor files a complaint against the law enforcement officer or agency.

The bill modifies existing law in three ways: first, it eliminates the usual “presentation” requirement that is a prerequisite for bringing a cause of action against a public entity or public employee; second, it modifies and extends the statute of limitations for sexual assault committed by a law enforcement officer by, among other things, allowing the victim to delay bringing the

action until after the officer is no longer employed by the law enforcement agency; and third, it revives otherwise time-barred claims for sexual assault by a law enforcement officer. According to the author, these changes address a survivor's quite reasonable fear that law enforcement officers could use their power to threaten, intimidate, or even falsely arrest the survivor who brings an action.

Author's statement. The author states that the bill is necessary because of the particularly difficult challenges that survivors of sexual assault face when trying to hold accountable their assailants who are law enforcement officers:

We should not require impossible-to-imagine bravery of women who have been sexually assaulted by law enforcement as a pre-condition to them seeking compensation for their life-altering trauma. Yet, that is the state of current law which can require already vulnerable and traumatized victims to sue based on the conduct of law enforcement while those officers are still on-duty; while they are still carrying and empowered to discharge their weapons, still empowered to arrest them or their loved one; still able to bring the bear the intimidating power that facilitated the assault in the first place.

According to the author, these uniquely challenging problems deter most survivors from ever filing claims against their assailants:

In 2019, a coalition of news organizations conducted a six-month investigation to examine how California conducts its legal and administrative processes for law enforcement officers who break the law. The investigation found that more than 600 California police officers have been convicted of a crime in the last decade -- more than 70 cases were related to assault and more than 50 cases were related to forcible sex offenses. Reported numbers fail to capture the actual number of assault incidents as the process of reporting sexual assault by a law enforcement officer can be harrowing, especially when victims feel intimidated by an attacker in a position of power or that their allegations will not be viewed as legitimate. Although the issue of law enforcement officers committing sexual assault while on duty has gained more attention recently, it is an extremely under-reported epidemic that disproportionately impacts low-income women of color.

The Case of Officer Noah White Winchester. According to the author, a recent case demonstrates the need for this bill. Noah Winchester, a police officer with the Los Rios Community College District, was recently convicted of sexually assaulting three women in San Mateo and two women in Sacramento. Investigations into the incident found that Officer Winchester would research his victims to ensure they were vulnerable to his threats. For example, he would target women with criminal records, or women who were on probation. None of Officer Winchester's victims sued him or the departments that employed him because, according to the author, they feared that Officer Winchester possessed power and authority to harass, intimidate, and arrest his victims. Given this behavior on the part of Winchester, it is certainly understandable that his victims did not feel safe in presenting a claim to his employing law enforcement agency within six months of the assaults.

Existing Statutes of Limitation for Sexual Assault. Statutes of limitation serve an important purpose in our legal system, whether they limit the time limit for the state to file criminal charges or limit the time for a plaintiff to bring a civil action. Statutes of limitation give the potential defendant some degree of repose by requiring the potential plaintiff to exercise due diligence in

bringing a timely cause of action. These statutes also reflect practical concerns that evidence and memories fade over time, such that delaying the action runs contrary to the interests of both plaintiffs and defendants. In recent years, however, the Legislature has attempted to take account of the fact that typical statutes of limitation – which require a plaintiff to bring an action within a reasonable period of time – fail to accommodate certain victims' complex and delayed process of dealing with, or even remembering, sexual abuse and assault. For example, SB 1779 (Chap. 149, Stats. 2002) extended the statute of limitations for victims of childhood sexual abuse and assault cases. More recently, AB 1619 (Chap. 939, Stats. 2018) extended the statute of limitations for adult victims of sexual assault from two years to 10 years after the assault or three years after discovery, whichever comes later. (Code of Civil Procedure 340.16 (a).)

The Legislature has the power to create, extend, and change statutes of limitation as it deems appropriate. The policy behind statutes of limitations provides that they "are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and the right to be free of stale claims in time comes to prevail over the right to prosecute them." (3 Witkin, California Procedure Section 433, 4th Ed.)

Nonetheless, courts have acknowledged that "the need for repose is not so overarching that the Legislature cannot by express legislative provision allow certain actions to be brought at any time, and it has occasionally done so." (*Duty v. Abex Corp* (1989) 214 Cal.App.3d 742, 749, citations omitted.) The United States Supreme Court has long held that: Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. . . . They are by definition arbitrary, and their operation does not discriminate against the just and the unjust claim, or the avoidable or unavoidable delay Their shelter has never been regarded as what now is called a "fundamental right" [T]he history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large degree of legislative control. (*Chase Securities Corp. v. Donaldson* (1945) 325 U.S. 304, 314.)

Although decided in the 1940s, the *Donaldson* holding and reasoning still apply. California courts continue to cite *Donaldson* to affirm the Legislature's power to revive civil cases that otherwise would be barred by the statute of limitations. For example, in *Liebig v. Superior Court* (1989) 209 Cal.App.3d 828 and *Lent v. Doe* (1995) 40 Cal.App.4th 1177, California appellate courts upheld Code of Civil Procedure Section 340.1, which revived otherwise time-barred childhood sexual assault cases. Similarly, in *Hellinger v. Farmers Group, Inc.* (2001) 91 Cal.App.4th 1049, the appellate court upheld a statute reviving insurance claims arising out of the 1994 Northridge earthquake that were otherwise time-barred. Like the bill under review, the statute reviving the Northridge claims created a one-year window to file the revived action. (SB 1899, Chap. 1090, Stats. 2000.) In short, the past actions of the Legislature (and the court cases upholding them) leave little doubt about the power of the Legislature to revive time-barred claims.

Statutes of limitations reflect the reality that, over time, documents are lost or destroyed, witnesses' memories fade, and evidence erodes. However, the current laws regarding the statute of limitations for sexual assault claims reflect another reality, namely that victims often have difficulty coming forward against a law enforcement officer soon after the abuse for a variety of reasons, including threats, fear of arrest, fear violence, and fear of retaliation.

This bill seeks to address this issue by giving victims of sexual assault by a law enforcement officer more time to file the claim in order to prevent victims in fear and intimidation of the alleged abuser from missing their opportunity to file a claim and seek justice. The bill provides two different applicable statutes of limitations for claims based upon sexual assault by a law enforcement officer, depending on whether the claim is time-barred. For claims that are *not* time-barred and made on a going forward basis, this bill would establish the new statute of limitations as either ten years after the date of judgment in a criminal case (if the action arises out of the same set of operative facts as the criminal case brought against the officer); or ten years after the date when the law enforcement officer is no longer employed by the agency, whichever is later. For claims that otherwise would be time-barred (because of applicable statute of limitations, any state or local government claim presentation deadline, or any other applicable time limit which has expired), the bill establishes the new statute of limitations for those revived claims as either ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff; or three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff, whichever is later.

Claim Presentation Requirement – Government Claims Act. Under the Government Claims Act, if a survivor of sexual assault intends to sue a public entity or public employee, the right to bring that action is currently subject to the “claims presentation” requirement. In other words, before bringing an action in court for damages against a public entity or public employee, the person suffering the damage must first “present” a claim to the public entity. The apparent rationale for this requirement is to give the public entity the opportunity to remedy the situation and, presumably, save all parties the time and expense of a lawsuit.

As a general rule, a claim for money damages must be presented to public entity no later than six months after the cause of action. As to sexual assault claims, however, the short time frame for bringing the claim presentation, prior to initiating a lawsuit, clearly frustrates the purpose of statute of limitations for sexual assault of an adult. Not only does the claim presentation requirement fail to recognize the rationale for extended statutes of limitations in sexual assault cases, it also requires the survivor of a sexual assault by a law enforcement officer to publicly present a claim while the officer most likely is still employed by the law enforcement agency and still in a potentially threatening position of authority. Moreover, the rationale for the longer statute of limitations for claims of sexual assault was based upon a legislative determination that, for a variety of complex social and psychological reasons, it often takes time for a survivor of sexual assault to come forward. The claim presentation requirement undermines the Legislature’s rationale for the extending the statute of limitations for sexual assault claims.

This bill provides that claims for sexual assault by a law enforcement officer are exempt from the Government Claims Act provisions and instead subject to the extended statutes of limitations for sexual assault claims described above. Given that the bill specifically exempts such claims from the claim presentation requirement on a going forward basis and revives claims that are time-barred for a number of reasons, including their failure to satisfy the claim presentation requirement, this provision applies to both past and future claims.

ARGUMENTS IN SUPPORT: The California Women’s Law supports this bill, writing:

California law gives victims of rape or sexual assault by on-duty police officers the right to sue their attacker but does not ensure safety measures for these victims. Without protection,

law enforcement officers have been able to use their power and authority to stalk, arrest, threaten, or retaliate against their victims.

The current statute of limitations for sexual assault victims over the age of eighteen to bring a civil case against a law enforcement officer is ten years from the date of the last act, attempted act, or assault with the intent to commit an act, or within three years of the date that the plaintiff discovered an injury or illness. However, due to the Government Claims Act, a plaintiff intending to sue a law enforcement officer must present a claim for injury or monetary damages no later than six months after the cause of action.

AB 1455 would exempt a claim rising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred while the officer was employed. The bill would give victims of sexual assault by a law enforcement officer ten years after the date of judgment in a criminal case or ten years after the law enforcement officer is no longer employed by the agency, whichever is later, to file a civil claim.

Additionally, the Consumer Attorneys of California supports this bill, writing:

AB 1455 is needed to ensure those who have been raped or sexually assaulted by on-duty police officers are provided a realistic opportunity to seek civil redress for their harms.... As former California Supreme Court Justice Arabian wrote in his concurrence in *Mary M. v. City of Los Angeles* (1991)54 Cal. 3d 202, 224:

A police officer is sworn to protect and to serve. In the pantheon of protection, we look to law enforcement officials as our first and last hope. When the police officer's special edge--the shield, gun and baton, the aura of command and the irresistible power of arrest--is employed to further a rape, the betrayal suffered by the victim is an especially bitter one.

This bill strikes a fair balance between the practical ability of sexually assaulted women to avail themselves of the courts to obtain compensation for (quoting Justice Arabian) this "especially bitter" betrayal of the public trust, the desire for police departments for repose, and the prospect of liability to play a meaningful role in prompting police departments to monitor and address conduct of troubled police officers, to the broader public's benefit.

Proposed Author Amendments. The author will take technical amendments in this Committee to reorganize the bill. The amendments may look extensive; however, they merely switch the order of two subdivisions in order to make for a more logical structure and correct a lettering and numbering formatting error in the bill in print.

The bill will be amended to read as follows:

945.9. (a) A claim arising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred while the officer was employed by a law enforcement agency is exempted from all state and local government claim presentation requirements.

~~(b) Notwithstanding any other law, a claim seeking to recover damages arising out of a sexual assault by a law enforcement officer, if the alleged sexual assault occurred on or after the plaintiff's 18th birthday while the officer was employed by a law enforcement agency, that has not been litigated to finality or compromised by an executed written settlement agreement and that would otherwise be barred because the applicable statute of limitations,~~

~~any state or local government claim presentation deadline, or any other applicable time limit has expired, is hereby revived and may be commenced if filed within either of the following periods of time:~~

~~(1) Ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.~~

~~(2) Three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.~~

~~(e)(b)~~ Notwithstanding ~~subdivision (b)~~ any other law, the time for commencement of a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer, if the alleged assault occurred while the officer was employed by a law enforcement agency, shall be the later of either of the following dates:

~~(A) (1)~~ Within 10 years after the date of judgment in a criminal case if the action arises out of the same set of operative facts as the criminal case brought against the officer.

~~(B) (2)~~ Within 10 years after the law enforcement officer is no longer employed by the law enforcement agency that employed the officer when the alleged assault occurred.

(c) Notwithstanding subdivision (b), a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer, if the alleged sexual assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency, that has not been litigated to finality or compromised by an executed written settlement agreement and that would otherwise be barred because the applicable statute of limitations, any state or local government claim presentation deadline, or any other applicable time limit has expired, is hereby revived and may be commenced if filed within either of the following periods of time:

(1) Ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

(2) Three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

REGISTERED SUPPORT / OPPOSITION:

Support

California Women's Law Center
Consumer Attorneys of California
National Association of Social Workers
NextGen California

Opposition

None on file

Analysis Prepared by: Victorian Anderson and Thomas Clark / JUD. / (916) 319-2334