

ASSEMBLY THIRD READING

AB 1455 (Wicks)

As Amended April 7, 2021

Majority vote

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.

Major Provisions

- 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.

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.

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.3rd 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.)

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.

According to the Author

The author states that this 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 and still in positions of authority. The author believes that these uniquely challenging problems deter most survivors from every filing claims. The author writes: "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."

Arguments in Support

The California Women's Law supports this bill, writing that "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. . . 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."

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, possible cost pressures in the hundreds of thousands of dollars annually (Trial Court Trust Fund/General Fund (GF)) to the trial courts in increased workload, given this bill would revive otherwise lapsed civil claims against peace officers or public entities employing peace officers where it is alleged a peace officer committed a sexual assault. The estimated cost of one eight-hour court day is approximately \$7,644. It unknown how many claims may be filed, however, if 50 cases otherwise time barred are filed in civil court requiring 48 total hours (six days) of workload, the cost would be approximately \$382,200. Although courts are not funded on the basis of workload, increased pressure on the courts and staff may create a need for increased funding for staff and infrastructure. This is particularly true given that courts have delayed hundreds of trials and civil motion during the COVID-19 pandemic resulting in a serious backlog that must be resolved.

VOTES

ASM JUDICIARY: 10-0-1

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

UPDATED

VERSION: April 7, 2021

CONSULTANT: Thomas Clark / JUD. / (916) 319-2334

FN: 0000420