

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1455 (Wicks)
Version: April 7, 2021
Hearing Date: June 29, 2021
Fiscal: Yes
Urgency: No
CK

SUBJECT

Sexual assault by law enforcement officers: actions against public entities: statute of limitations

DIGEST

This bill amends the statute of limitations for seeking damages arising out of a sexual assault committed by a law enforcement officer, eliminates the claim presentation requirements for such claims, and revives such claims that would otherwise be barred by the existing statute of limitations.

EXECUTIVE SUMMARY

The statute of limitations for damages arising from a sexual assault that occurred when the victim was an adult is 10 years from the date of the last actionable conduct or three years from the discovery of the injury resulting, as specified.

This bill deals with actions involving sexual assault committed by law enforcement officers while the officer is employed with a law enforcement agency. It first eliminates the application of the claim presentation requirement. It then amends the applicable statute of limitations to the later of 10 years after judgment in a related criminal case against the officer; or 10 years after the officer is no longer employed by the law enforcement agency that employed the officer when the assault occurred.

The bill also revives such claims when the plaintiff was 18 years of age or older at the time of the assault and the claim has not otherwise been litigated or compromised, but would otherwise be time barred. Such revived actions are to be brought with 10 years of the most recent act, as provided, or three years from the date of discovery of an injury or illness resulting from the assault.

This bill is author-sponsored. It is supported by several groups, including the California Women's Law Center. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires all civil actions be commenced within applicable statutes of limitations. (Code Civ. Proc. § 312.)
- 2) Provides that in any civil action commenced on or after January 1, 2019, for recovery of damages suffered as a result of sexual assault, as defined, where the assault occurred on or after the plaintiff's 18th birthday, the time for commencement of the action shall be the later of the following:
 - a) within 10 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
 - 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 the intent to commit an act, of sexual assault against the plaintiff. (Code Civ. Proc. § 340.16(a), (c) ("Section 340.16."))
- 3) Defines "sexual assault," for the purposes of the above provision, to mean any of the crimes described in Section 243.4, 261, 262, 264.1, 286, 287, former 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. (§ 340.16(b)(1).)
- 4) Clarifies that it is not necessary that a criminal prosecution or other proceeding have been brought as a result of the sexual assault or, if a criminal prosecution or other proceeding was brought, that the prosecution or proceeding resulted in a conviction or adjudication. It further makes clear that Section 340.16(b) does not limit the availability of causes of action permitted under Section 340.16(a), including causes of action against persons or entities other than the alleged person who committed the crime. (§ 340.16(b)(2).)
- 5) Provides revival periods for claims arising from sexual assault or other sexual misconduct perpetrated by physicians in two unique circumstances. (§ 340.16(c), (d).)
- 6) Provides that an action for recovery of damages suffered as a result of childhood sexual assault must be commenced within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later. (Civ. Proc. Code § 340.1(a).)

- 7) Applies the above statute of limitations to the following actions, as specified:
 - a) an action against any person for committing an act of childhood sexual assault;
 - b) an action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff; and
 - c) an action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff. (Civ. Proc. Code § 340.1(a).)
- 8) Revives any claim for damages for childhood sexual assault, as described above, that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claim presentation deadline, or any other time limit had expired, is revived, and these claims may be commenced within three years of January 1, 2020. A plaintiff shall have the later of this three-year time period or the time period described in paragraph 6) above. (Civ. Proc. Code § 340.1(q).)
- 9) Provides that claims for money or damages against local public entities must be presented in accordance with specified procedures, unless specifically exempted. (Gov. Code § 905.) A written claim relating to a cause of action for death or for injury to person or to personal property shall be presented not later than six months after the accrual of the cause of action with the ability to file an application to present an untimely claim up to one year after the accrual of the cause of action. (Gov. Code §§ 911.2, 911.4.) A claim relating to any other cause of action shall be presented not later than one year after the accrual of the cause of action. (Gov. Code § 911.2.) “Local public entity” includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State. (Gov. Code § 900.4.)
- 10) Establishes numerous exceptions to the claims presentation requirements including claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. (Gov. Code § 905.)

This bill:

- 1) Exempts claims 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 from all state and local government claim presentation requirements.

- 2) Requires 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, to be commenced by the later 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) Revives claims, as described above, 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 if the alleged sexual assault occurred on or after the plaintiff's 18th birthday and the claim has not been litigated to finality or compromised by an executed written settlement agreement. Such actions must be commenced 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; or
 - 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

1. Statutes of limitation

A statute of limitations is a requirement to commence legal proceedings (either civil or criminal) within a specific period of time. Statutes of limitations are tailored to the cause of action at issue – for example, cases involving injury must be brought within two years from the date of injury, cases relating to written contracts must be brought four years from the date the contract was broken, and, as commonly referenced in the media, there is no statute of limitations for murder. Although it may appear unfair to bar actions after the statute of limitations has elapsed, that limitations period serves important policy goals that help to preserve both the integrity of our legal system and the due process rights of individuals.

For example, one significant reason that a limitations period is necessary in many cases is that evidence may disappear over time – paperwork gets lost, witnesses forget details or pass away, and physical locations that may be critical to a case change over time. Limitations periods also promote finality by encouraging an individual who has been

wronged to bring an action sooner rather than later – timely actions arguably ensure that the greatest amount of evidence is available to all parties.

In general, California law requires all civil actions be commenced within applicable statutes of limitations. (Code Civ. Proc. § 312.) Under existing law, the general statute of limitations in California to bring an action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another, is two years. (Code Civ. Proc. § 335.1)

Currently, certain actions for childhood sexual abuse must be commenced within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later. (Civ. Proc. Code § 340.1.)

In 2018, AB 1619 (Berman, Ch. 939, Stats. 2018) added Section 340.16 to the Code of Civil Procedure expanding the statute of limitations for recovery of damages suffered by an *adult* as a result of sexual assault. Section 340.16 provides that a case seeking damages suffered as a result of sexual assault, as defined, where the assault occurred when the plaintiff was 18 years of age or older, must be brought by the later of the following:

- (a) within 10 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
- (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 the intent to commit an act, of sexual assault against the plaintiff.

This statute thus starts the clock for adult victims of sexual assault to assert their civil claims against those responsible. This bill provides an extension of this statute of limitations for specific instances of sexual assault.

It provides that a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer while the officer was employed by a law enforcement agency, must be commenced by the later of either of the following dates:

- 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;
- 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.

The earlier timeline is not dependent on the ultimate outcome of the criminal case. The latter timeline begins when the officer moves departments or is no longer employed as an officer.

The author explains the justification for this extension of time:

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 [to] bear the intimidating power that facilitated the assault in the first place. As former (and conservative) 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.” Indeed, a victim of sexual assault by a priest can attend another parish; a victim of sexual assault by a doctor see another one. But, absent moving [their] loved ones to a different jurisdiction, a victim of sexual assault by active law enforcement cannot escape the reach and awesome power of the person whose conduct serves as the basis of the action.

This bill strikes a far fairer balance between the practical ability of sexually assaulted victims to avail themselves of the courts to obtain compensation for 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 law enforcement, to the broader public’s benefit.

2. Claim presentation requirement

The Government Tort Claims Act generally governs damage claims brought against public entities. (Gov. Code § 815 et seq.) In addition to any time limitations placed by other statutes on such claims, the act requires that a claim that is brought against a public entity relating to a cause of action for death or for injury to a person be presented in writing to the public entity not later than six months after accrual of the cause or causes of action. (Gov. Code § 911.2.)

Existing law establishes numerous exceptions to these claims presentation requirements including claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. (Gov. Code § 905.)

This bill similarly exempts 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 from all state and local government claim presentation requirements.

The California Women's Law Center writes in support of this provision:

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 arising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred while the officer was employed.

3. Revival of time-barred claims

This bill explicitly revives claims seeking to recover damages arising out of a sexual assault by a law enforcement officer, if at the time of the assault the plaintiff was an adult and the officer was employed by a law enforcement agency, that would otherwise be barred because the applicable statute of limitations, any government claim presentation deadline, or any other applicable time limit has expired. This does not apply where the claim has been litigated to finality or compromised by an executed written settlement agreement. The time for commencement of such revived claims is within either of the following periods of time:

- 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.

As can be imagined, there are exceptionally egregious instances of a statute of limitations running out and leaving a victim of such heinous acts without a remedy.

Recently, the Legislature has revived time-barred claims for sexual assaults in several contexts.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) provides that the claims provided for in Section 340.1 involving childhood sexual assault that would otherwise be barred as of January 1, 2020, because an applicable statute of limitations, claim presentation deadline, or any other time limit had expired, are explicitly revived by the bill. AB 218 created a three-year window in which such claims can be brought, or, if later, within the statute of limitations period newly established by the bill.

AB 1510 (Reyes, Ch. 462, Stats. 2019) amended Section 340.16 by reviving claims that arose out of either sexual assault, or other inappropriate contact, communication, or activity of a sexual nature, by a physician, where the conduct occurs at a student health center between January 1, 1988, and January 1, 2017. The revival applied to claims that would have otherwise been time-barred prior to January 1, 2020, solely because the applicable statute of limitations had expired. AB 1510 provided that a cause of action could proceed if already pending in court or, if not filed, could be commenced within a one-year revival period starting January 1, 2020.

The revival period created by AB 1510 was tailored to a now infamous scandal at the University of Southern California student health clinic, where one full-time gynecologist, Dr. George Tyndall, was repeatedly accused of sexually assaulting, and engaging in other sexual misconduct with, numerous patients, and the school was accused of failing to act to stop his crimes and protect students.

AB 3092 (Wicks, Ch. 246, Stats. 2020) dealt with a similar situation with similar legislative action. It closely tracked the provisions included by AB 1510, but revived claims seeking to recover damages arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician while employed by a medical clinic owned and operated by UCLA, or a physician who held active privileges at a hospital owned and operated by UCLA, at the time that the sexual assault or other inappropriate contact, communication, or activity of a sexual nature occurred, between January 1, 1983, and January 1, 2019.

The perpetrator at the center of this scandal was Dr. James Heaps. UCLA was found to have failed to adequately respond to allegations, potentially allowing preventable misconduct, namely the sexual assault of additional students.

4. Policy implications of revival

The California Supreme Court has squarely addressed the modification of statutes of limitations and the revival of stale claims:

The Legislature has authority to establish—and to enlarge—limitations periods. . . . [H]owever, legislative enlargement of a limitations period does not revive lapsed claims in the absence of express language of revival. This rule of construction grows out of an understanding of the difference between prospective and retroactive application of statutes. . . . As long as the former limitations period has not expired, an enlarged limitations period ordinarily applies and is said to apply prospectively to govern cases that are pending when, or instituted after, the enactment took effect. This is true even though the underlying conduct that is the subject of the litigation occurred prior to the new enactment. . . . However, when it comes to applying amendments that enlarge the limitations period to claims as to which the limitations period has expired before the amendment became law—that is, claims that have lapsed—the analysis is different. Once a claim has lapsed (under the formerly applicable statute of limitations), revival of the claim is seen as a retroactive application of the law under an enlarged statute of limitations. Lapsed claims will not be considered revived without express language of revival.

(*Quarry v. Doe I (Quarry)* (2012) 53 Cal.4th 945, 955-957, internal citations omitted.) The court continues, specifically addressing the policy reasons against revival:

“The reason for this rule is a judicial perception of unfairness in reviving a cause after the prospective defendant has assumed its expiration and has conducted his affairs accordingly.” As one court commented, “a statute of limitations grants prospective defendants relief from the burdens of indefinite exposure to stale claims. By reviving lapsed claims, the Legislature may appear to renege on this promise. As Judge [Learned] Hand wrote, there may be something ‘unfair and dishonest’ in after-the-fact withdrawal of this legislative assurance of safety.” Individuals, as well as businesses and other enterprises ordinarily rely upon the running of the limitations period: “The keeping of records, the maintenance of reserves, and the commitment of funds may all be affected by such reliance To defeat such reliance . . . deprives [enterprises] of the ability to plan intelligently with respect to stale and apparently abandoned claims.”

(*Quarry*, at 958, internal citations omitted.)

The California Supreme Court thus makes the case against reviving claims that have expired, highlighting the principle that such revival, while within the Legislature’s power, should not be provided lightly. (See also *Chase Sec. Corp. v. Donaldson* (1945) 325 U.S. 304, 314 [finding statutes of limitations are “good only by legislative grace and to be subject to a relatively large degree of legislative control”]; *Liebig v. Superior Court* (1989) 209 Cal. App. 3d 828, 831-834; *Lent v. Doe* (1995) 40 Cal.App.4th 1177, 1181 [finding the Legislature has the power to revive causes of action].) The courts have

made clear that important state interests must be at stake to justify such a disruption of the law.

In analyzing the expansion of the limitations period in AB 1619, this Committee stated:

The nature of sexual assault arguably supports the need for a longer statute of limitations for survivors to be able to raise their claims. While recovering from sexual assault, many survivors do not have the capacity to also pursue civil remedies. As stated by the author [of AB 1619], the “current two-year statute of limitations simply does not provide sexual assault survivors adequate time to heal from the physical and emotional trauma of a sexual assault and prepare for a civil case.” Researchers are learning more about the aftermath of sexual assault. As more information about the potential for post-traumatic stress syndrome (PTSD), depression, and other mental health complications in sexual assault survivors is unveiled, it is clear that two years does not provide victims with the time needed to heal from the trauma of sexual assault.¹ By providing victims the later of 10 years or within 3 years from when the plaintiff discovers or reasonably should have discovered an injury or illness that resulted from the sexual assault, this bill would provide victims with a timeframe that is more respectful of the violence they have endured and the trauma that has resulted.

These same principles arguably support a revival period for the claims at the center of this bill as they did with AB 1510 and AB 3092.

The bill is motivated in part by the actions of a former police officer, Noah White Winchester, who was sentenced to prison for sexually assaulting five women while on duty in Sacramento and San Mateo.² The case highlighted how such officers can use their positions of power to intimidate and silence those they assault. Writing in support, the Consumer Attorneys of California make the connection:

Reports have concluded that Winchester would research his victims to ensure they were vulnerable to his threats, i.e., those with criminal records or who were on probation.

None of these victims sued Winchester or the departments that employed him within the time allowed for the very same reason they were vulnerable to his intimidation in the first place: Winchester was still on-duty as a police officer; still carrying and empowered to discharge his

¹ *Statistics about Sexual Violence* (2015) National Sexual Violence Resource Center, http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf [as of June 17, 2021].

² Sam Stanton, *Ex-California cop convicted of rape, Los Rios college district sued over sexual assault* (October 13, 2020) The Sacramento Bee, <https://www.sacbee.com/news/local/article246408045.html> [as of June 17, 2021].

weapons; still empowered to arrest them or their loved ones; still able to bring [to] bear the intimidating power and deadly force that facilitated the assault in the first place.

5. Amendments

As discussed above, there is a statute of limitations specific to claims arising from childhood sexual assault. While the current bill applies the revival period only to those plaintiffs who are 18 years of age or older at the time of the assault, the other provisions do not similarly limit the application. Given the potential confusion for the appropriate limitations period to apply if a plaintiff is seeking damages arising from a sexual assault committed by a law enforcement officer while employed as an officer and while the plaintiff was a minor, the author has agreed to limit the limitations period laid out in subdivision (b) to plaintiffs who were 18 years of age or older at the time of the assault.

In addition, the various other statutes discussed herein, Code of Civil Procedure sections 340.1 and 340.16, specifically define the underlying conduct at issue, “childhood sexual assault” and “sexual assault,” respectively. For better clarity, the author has agreed to include a definition for “sexual assault” in this bill that mirrors that in section 340.16.

Finally, the author is also taking amendments that amend subdivision (b)(1) in the bill, so that the relevant time period is within 10 years after the date of judgment “*against* a law enforcement officer” in a criminal case for the crime of sexual assault or a judgment for a different crime where sexual assault was also alleged and the crime for which the judgment comes down against the officer arose out of the same set of operative facts as the underlying allegation of sexual assault.

SUPPORT

California Women’s Law Center
Consumer Attorneys of California
National Association of Social Workers, California Chapter
NextGen California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation:

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AB 3092 (Wicks, Ch. 246, Stats. 2020) *See* Comment 3.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) *See* Comment 3.

AB 1510 (Reyes, Ch. 462, Stats. 2019) *See* Comment 3.

AB 1619 (Berman, Ch. 939, Stats. 2018) *See* Comment 1.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
