
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

AB 1455 (Wicks) - Sexual assault by law enforcement officers: actions against public entities: statute of limitations

Version: July 1, 2021

Urgency: No

Hearing Date: July 15, 2021

Policy Vote: JUD. 9 - 0

Mandate: No

Consultant: Shaun Naidu

Bill Summary: AB 1455 would amend the statute of limitations for seeking damages arising out of a sexual assault committed by a law enforcement officer, eliminate the claim presentation requirements for such claims, and revive such claims that otherwise are barred by the existing statute of limitations.

Fiscal Impact:

- State judgements & settlements: Unknown, potentially-major costs in the millions of dollars in the aggregate to the extent there are verdict or judgement awards against, or settlements made by, the state for claims filed outside of existing deadlines related to alleged conduct by a state law enforcement officer, such as a California Highway Patrol officer. (General Fund)
- Courts: Unknown, potentially-significant workload cost pressures to the courts to adjudicate claims that would be revived or otherwise permitted by measure that fall outside of the existing filing or claim presentation deadline. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)
- Department of Corrections and Rehabilitation (CDCR): The department reports that AB 1455 may result in unknown but potentially-significant cost pressures related primarily to increased attorney expenses and longer records retention periods. It also may incur increased costs associated with the payment of settlements, additional costs related to witnesses, and potentially increased legal exposure given that this measure would revive lapsed claims and CDCR uses existing statutes of limitations to determine records retention schedules. (General Fund)
- Department of Justice (DOJ): Unknown, potentially-significant workload cost pressures for Deputy Attorneys General (DAGs) to litigate an increase in civil suits alleging sexual assault committed by law enforcement officers. The department estimates the need for 2.0 DAGs and 1.0 Legal Secretary to handle increased workload associated with this measure. (Special fund**)

*Trial Court Trust Fund

**Legal Services Revolving Fund

Background: Existing law general sets the time that a person may bring a civil action for recovery of damages suffered as a result of sexual assault, as defined, to the later of within 10 years from the date of the last act, attempted act, or assault with intent to commit an act, of sexual assault by the defendant against the plaintiff or 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 by the defendant against the plaintiff. There are, however, a number of exemptions to this general statute of limitations.

For example, existing law revives claims for damages of more than \$250,000 arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician occurring at a non-public-entity student health center between January 1, 1988, and January 1, 2017, that otherwise would be barred before January 1, 2020, solely because the applicable statute of limitations has or had expired, and would allow a cause of action to proceed if already pending in court on October 2, 2019, or, if not filed by that date, to be commenced between January 1, 2020, and December 31, 2020. Additionally, existing law revives claims for 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 the University of California, Los Angeles (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, that otherwise would be barred before January 1, 2021, solely because the applicable statute of limitations has or had expired, and would allow a cause of action to proceed if already pending in court on January 1, 2021, or, if not filed by that date, to be commenced between January 1, 2021, and December 31, 2021.

Separately, the Government Tort Claims Act generally governs tort actions against public entities. The statute of limitations notwithstanding, the act requires that an action that is filed against a public entity related to a cause of action for the death of or injury to a person be presented in writing to the public entity within six months of the accrual of the cause of action. As with the general statute of limitations, there are a number of exemptions to the Government Tort Claims Act filing deadline. For example, in 2018, the Legislature amended the act to state explicitly that it does not apply to claims of childhood sexual abuse.

Proposed Law: This bill would do the following for a claim arising from an alleged sexual assault, as defined, by a law enforcement officer if the alleged assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency:

- Exempt the claim from all state and local government claim presentation requirements.
- Require the claim to be commenced within 10 years of the later of either of the following:
 - The date of judgment against a law enforcement officer in a criminal case for either of the following:
 - A crime of sexual assault.
 - A different crime if a crime of sexual assault was alleged and the crime for which there was a judgment against a law enforcement officer arose out of

the same set of operative facts as the allegation of sexual assault in the present claim.

- After the law enforcement officer is no longer employed by the law enforcement agency that employed the officer when the alleged assault occurred.
- Revive and allow to be commenced a claim seeking to recover damages, if the claim has not been litigated to finality or compromised by an executed written settlement agreement, and otherwise would be barred because the applicable statute of limitations, any state or local government claim presentation deadline, or any other applicable time limit, if it is filed within either of the following:
 - 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.
 - 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 measure would define “sexual assault” to mean any of the crimes of sexual battery, rape (including of a spouse or in concert with another person by force or violence), sodomy, oral copulation, and forcible act of sexual penetration.

Related Legislation: AB 3092 (Wicks, Ch. 246, Stats. 2020) revived otherwise time-barred claims for damages alleging sexual assault and other inappropriate conduct of a sexual nature by a physician while employed by a UCLA medical clinic or who held active privileges at a UCLA hospital, as specified.

AB 1510 (Reyes, Ch. 462, Stats. 2019) allowed individuals to bring specific time-barred civil claims related to adult sexual assault and similar activities by a physician occurring at a student health center, as specified.

AB 1619 (Berman, Ch. 939, Stats. 2018) extended the statute of limitations for civil actions seeking damages suffered as a result of sexual assault, where the assault occurred on or after the plaintiff's eighteenth birthday, to 10 years from the date of the last sexual assault.

Staff Comments: The fiscal impact of AB 1455 to the courts would depend on many unknown factors, including the numbers of violations alleged to have occurred, if parties settle the matter before the filing of an action, if a class action suit is brought, if cases proceed to trial, and the factors unique to each case. While it is not known how many actions ultimately would be filed outside of the existing statute of limitations and Government Tort Claims Act requirements, it generally costs about \$8,032 (in FY 2020-2021) to operate a courtroom for one eight-hour day. Consequently, if claims permitted by AB 1455 that otherwise could not be civilly litigated under existing law, combined, take more than 50 hours of court involvement, the cost pressures of this measure to the courts would surpass the Suspense File threshold. As indicated above, while courts are not funded on a workload basis, an increase in workload could result in delayed services and would put pressure on the General Fund to fund additional staff and resources.

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