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THIRD READING

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Bill No: AB 1455  
Author: Wicks (D)  
Amended: 7/1/21 in Senate  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 9-0, 6/29/21  
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,  
Wieckowski, Wiener  
NO VOTE RECORDED: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-0, 8/26/21  
AYES: Portantino, Bradford, Kamlager, Laird, McGuire  
NO VOTE RECORDED: Bates, Jones

ASSEMBLY FLOOR: 71-0, 5/28/21 - See last page for vote

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

**SOURCE:** Author

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**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.

**ANALYSIS:**

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) Provides revival periods for claims arising from sexual assault or other sexual misconduct perpetrated by physicians in two unique circumstances. (§ 340.16(c), (d).)
  - 5) 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).)
  - 6) 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).)
  - 7) 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).)

- 8) 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.)
- 9) 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 sexual assault occurred on or after the plaintiff's 18th birthday and 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 against a law enforcement officer in a criminal case for a crime of sexual assault or a judgment against a law enforcement officer for 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.
  - 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 sexual 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) 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) 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.
- 4) Defines “sexual assault” as any of the crimes described in Section 243.4, 261, 262, 264.1, 286, 287, or 289, or former Section 288a, of the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes.

## **Background**

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.

This 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.

## **Comments**

### *Statute of Limitations*

Section 340.16 to the Code of Civil Procedure expands 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.

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.

### *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. (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.

### *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 sexual 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.

**FISCAL EFFECT:** Appropriation: No   Fiscal Com.: Yes   Local: No

According to the Senate Appropriations Committee:

- *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 bill would revive lapsed claims and CDCR uses existing statutes of limitations to determine records retention schedules. (General Fund)
- *Department of Justice*: 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 bill. (Special fund\*\*)

\*Trial Court Trust Fund

\*\*Legal Services Revolving Fund

**SUPPORT:** (Verified 8/27/21)

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

**OPPOSITION:** (Verified 8/27/21)

None received

**ARGUMENTS IN SUPPORT:** The California Women's Law Center writes in support: "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."

ASSEMBLY FLOOR: 71-0, 5/28/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Choi, Cristina Garcia, Kiley, Low, Maienschein, Mathis, Patterson, Smith

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113  
8/28/21 11:23:43

\*\*\*\* END \*\*\*\*